

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 6, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 14
 DEFENDANT.)
) PAGES 2177 - 2443

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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33 ADMINISTRATION
34 BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

APRIL 6, 2022

2 P R O C E E D I N G S

3 (COURT CONVENED AT 8:50 A.M.)

08:50AM 4 (JURY OUT AT 8:50 A.M.)

08:50AM 5 THE COURT: THANK YOU. PLEASE BE SEATED. WE ARE ON
08:50AM 6 THE RECORD OUTSIDE OF THE PRESENCE OF THE JURY.

08:50AM 7 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

08:50AM 8 I JUST WANTED TO CHAT JUST A MOMENT ABOUT THIS ISSUE THAT
08:50AM 9 WE LEFT ON YESTERDAY THAT WE'RE GOING TO DISCUSS ABOUT THE
08:50AM 10 LETTERS AND WHETHER OR NOT AND HOW THOSE WOULD COME IN.

08:50AM 11 I KNOW MR. SCHENK MENTIONED THAT MIGHT BE AN ISSUE WITH AN
08:50AM 12 ADDITIONAL WITNESS THAT WAS GOING TO COME UP.

08:50AM 13 AND I KNOW MS. VOLKAR ARGUED THE MOTION. I DON'T SEE HER
08:50AM 14 IN THE COURTROOM RIGHT NOW. WE CAN GET HER IF WE NEED TO.

08:50AM 15 BUT I JUST WANTED TO SHARE SOME THOUGHTS AND ASK SOME
08:50AM 16 QUESTIONS.

08:50AM 17 MR. SCHENK, DID YOU WANT TO RETRIEVE HER OR COLLECT HER?

08:50AM 18 MR. SCHENK: THANK YOU, YOUR HONOR.

08:51AM 19 MS. VOLKAR GAVE US PERMISSION TO SHARE WITH THE COURT, SHE
08:51AM 20 IS A LITTLE UNDER THE WEATHER AND HAS BEEN FOR A FEW DAYS.
08:51AM 21 SHE'S BEEN TESTING NEGATIVE, BUT TO BE SAFE, SHE WANTED TO STAY
08:51AM 22 OUT OF THE COURTHOUSE.

08:51AM 23 THE COURT: SURE. OKAY. WELL, THANK YOU.

08:51AM 24 WELL, MR. BRECHER IS HERE, AND HE ARGUED THE MOTION, SO
08:51AM 25 THANK YOU FOR BEING HERE.

08:51AM 1 BUT THIS MORNING, AT SOME POINT, AS I UNDERSTAND IT,
08:51AM 2 MS. CULLEN WILL TESTIFY, AND SHE'S THE SCHERING-PLOUGH EMPLOYEE
08:51AM 3 AND MY SENSE IS THAT SHE WILL TESTIFY THAT SHE RECEIVED THESE
08:51AM 4 TWO DOCUMENTS, ONE ALTERED AND ONE UNALTERED, WE'LL JUST CALL
08:51AM 5 THEM FOR OUR DISCUSSION.

08:51AM 6 I'M INFORMED BY THE TRANSCRIPT FROM THE OTHER TRIAL AS TO
08:51AM 7 THAT LINE OF TESTIMONY, I THINK WE'RE ALL FAMILIAR WITH THAT.

08:51AM 8 SO I'M WONDERING IF -- LET'S TALK ABOUT THE UNALTERED
08:52AM 9 DOCUMENT, AND HELP ME OUT HERE.

08:52AM 10 THIS WAS A LETTER OR -- THAT WAS FOUND ON MR. BALWANI'S
08:52AM 11 COMPUTER AT WORK; IS THAT RIGHT? IS THAT HOW THAT CAME TO BE?

08:52AM 12 MR. SCHENK: SO EXHIBIT 259 IS A VERSION OF THE
08:52AM 13 VALIDATION REPORT THAT DOES NOT CONTAIN THE SCHERING-PLOUGH
08:52AM 14 LOGO THAT WAS SENT FROM THERANOS TO DR. CULLEN. SHE RECEIVED
08:52AM 15 THAT ONE PERSONALLY AND WILL SAY THIS WAS CREATED BY THERANOS,
08:52AM 16 IT'S THERANOS'S CONCLUSIONS, AND THERE IS NO SCHERING-PLOUGH
08:52AM 17 LOGO AFFIXED TO THE DOCUMENT.

08:52AM 18 THE COURT: AND THAT WAS RECEIVED BY HER FROM A
08:52AM 19 THERANOS EMPLOYEE.

08:52AM 20 WAS IT FRENZEL OR SOMETHING LIKE THAT?

08:52AM 21 MR. SCHENK: GARY FRENZEL.

08:52AM 22 THE COURT: YES, THAT'S RIGHT.

08:52AM 23 AND SHE'LL BE ASKED PRESUMABLY, DID YOU RECEIVE THIS?

08:53AM 24 YES.

08:53AM 25 RIGHT?

08:53AM 1 MR. SCHENK: CORRECT.

08:53AM 2 AND THEN SEPARATELY, EXHIBIT 291 IS A VERSION THAT SHE DID
08:53AM 3 NOT RECEIVE. 291 IS A VERSION THAT WAS SENT BY MS. HOLMES TO
08:53AM 4 WALGREENS WITH MR. BALWANI ON THE CC LINE.

08:53AM 5 THAT HAS AS AN ATTACHMENT THE SCHERING-PLOUGH DOCUMENT,
08:53AM 6 BUT THAT DOCUMENT HAD BOTH A SCHERING-PLOUGH LOGO AND WHAT IN
08:53AM 7 THE HOLMES TRIAL WE CALLED AN ENHANCED CONCLUSION.

08:53AM 8 AND DURING THE HOLMES TRIAL, WE SHOWED THAT VERSION TO
08:53AM 9 DR. CULLEN AND SHE SAID, I DID NOT AUTHORIZE AFFIXING THE LOGO,
08:53AM 10 THIS IS NOT MY CONCLUSION, AND I'M NOT AWARE OF ANYBODY AT
08:53AM 11 SCHERING-PLOUGH WHO AUTHORIZED EITHER THE LOGO OR THE
08:53AM 12 CONCLUSION.

08:53AM 13 THE COURT: AND WHAT IS WRONG WITH THAT,
08:53AM 14 MR. BRECHER?

08:53AM 15 MR. BRECHER: THERE ARE TWO PROBLEMS WITH THAT,
08:53AM 16 YOUR HONOR, AND MS. WALSH IDENTIFIED BOTH YESTERDAY.

08:54AM 17 THE FIRST IS THE IDENTIFICATION ISSUE.

08:54AM 18 THE PROBLEM THAT MR. SCHENK IDENTIFIED IS THAT DR. CULLEN
08:54AM 19 NEVER IDENTIFIED -- NEVER RECEIVED WHAT MR. SCHENK CALLS THE
08:54AM 20 ENHANCED VERSION.

08:54AM 21 THE FIRST PROBLEM, THE BIGGER PROBLEMS ARE THE ONES THAT
08:54AM 22 WE IDENTIFIED IN OUR MOTION. WE DON'T BELIEVE THAT, AS OF
08:54AM 23 MARCH 2010 AND APRIL 2010, WHICH IS WHEN THE ENHANCED VERSION
08:54AM 24 WAS SENT TO WALGREENS, THAT THERE WAS -- THAT THE GOVERNMENT
08:54AM 25 HAS MET ITS BURDEN, ITS INITIAL THRESHOLD BURDEN OF PROVING THE

08:54AM 1 EXISTENCE OF A CONSPIRACY BY A PREPONDERANCE OF THE EVIDENCE.

08:54AM 2 THE COURT: IS THAT NECESSARY TO HAVE THAT

08:54AM 3 INTRODUCED?

08:54AM 4 MR. BRECHER: IT IS, YOUR HONOR, TO THE EXTENT THAT

08:54AM 5 THE COURT INTENDS -- OR THE GOVERNMENT INTENDS TO PRESENT TO

08:54AM 6 THE JURY AND THE COURT ALLOWS THE GOVERNMENT TO PRESENT TO THE

08:54AM 7 JURY THE IDEA THAT THERE IS ANYTHING NEFARIOUS GOING ON WITH

08:54AM 8 THESE LOGOS.

08:55AM 9 AS WE POINTED OUT, YOUR HONOR, THERE IS NO EVIDENCE THAT

08:55AM 10 MR. BALWANI HAD ANY KNOWLEDGE THAT THE LOGOS WERE ADDED

08:55AM 11 IMPROPERLY OR WITHOUT AUTHORIZATION, NONE WHATSOEVER.

08:55AM 12 AND THERE'S ONLY ONE PIECE OF EVIDENCE THAT MR. BALWANI

08:55AM 13 WAS COPIED IN, I BELIEVE IT'S MARCH 19TH, 2010, WITH WHAT WE'LL

08:55AM 14 CALL THE ORIGINAL VERSION OF THE MEMO; THAT MR. BALWANI EVEN

08:55AM 15 SAW THE UNENHANCED VERSION.

08:55AM 16 THE COURT: SO THAT WOULD BE ADMISSIBLE IF WERE

08:55AM 17 INTRODUCED?

08:55AM 18 IF AN I.T. TESTIFIED THAT WE SEARCHED THE COMPUTER OR

08:55AM 19 THERE'S A FOUNDATION THAT THIS IS ON MR. BALWANI'S COMPUTER,

08:55AM 20 THAT'S ADMISSIBLE.

08:55AM 21 MR. BRECHER: IT COULD BE ADMISSIBLE, YOUR HONOR,

08:55AM 22 BUT NOT FOR THE REASONS THAT -- BUT THERE ARE SOME PROBLEMS FOR

08:55AM 23 THE REASONS THAT WE IDENTIFIED IN OUR MOTION; NAMELY, TO THE

08:55AM 24 EXTENT THAT THE GOVERNMENT INTENDS TO ARGUE THAT THERE WAS

08:55AM 25 SOMETHING WRONG OR UNAUTHORIZED ABOUT THE ADDING OF THE LOGOS

08:55AM 1 OR THE CHANGING OF THE CONCLUSION, THERE IS NO EVIDENCE THAT
08:56AM 2 MR. BALWANI KNEW THAT, NONE, ABOUT ANY UNAUTHORIZED ADDITIONS.
08:56AM 3 THERE SIMPLY ISN'T.

08:56AM 4 AND EVEN PUTTING THAT ASIDE, EVEN IF THE GOVERNMENT WERE
08:56AM 5 PROCEEDING UNDER A THEORY OF COCONSPIRATOR LIABILITY OR
08:56AM 6 COSCHEMER LIABILITY, THERE IS NOT THAT THRESHOLD SHOWING THAT A
08:56AM 7 CONSPIRACY TO DEFRAUD EXISTED IN MARCH OR APRIL OF 2010.

08:56AM 8 I DON'T KNOW HOW THE GOVERNMENT GETS THERE. THE TEXT
08:56AM 9 MESSAGES THAT THEY POINT TO START IN 2012.

08:56AM 10 THE INVESTOR FUND RAISING THAT THEY CHARGE AND DISCUSS IS
08:56AM 11 IN 2013, THREE YEARS LATER.

08:56AM 12 AND EVEN WHEN IT COMES TO THE RETAIL PARTNERS, YOU'RE
08:56AM 13 DEALING WITH CONTRACTS THAT WERE NOT FINALIZED UNTIL JULY OF
08:56AM 14 2010.

08:56AM 15 MR. BALWANI DID NOT BECOME A SENIOR EXECUTIVE AT THE
08:56AM 16 COMPANY UNTIL JULY 2010. NOT A DIME WAS RECEIVED FROM ANY
08:56AM 17 RETAILER UNTIL 2010.

08:56AM 18 THE COURT: SO THE FACT THAT IT'S FOUND ON HIS
08:56AM 19 COMPUTER, DOES THAT GO TO SOME OTHER ISSUE? DOES THAT GO TO
08:57AM 20 KNOWLEDGE?

08:57AM 21 MR. BRECHER: YOUR HONOR, THE GOVERNMENT CONTENTS
08:57AM 22 THAT THE FACT THAT MR. BALWANI WAS COPIED ON MARCH 19TH ON AN
08:57AM 23 EMAIL THAT ATTACHES THE UNALTERED VERSION, AND THEN ALSO COPIED
08:57AM 24 ON APRIL 10TH, ABOUT A MONTH LATER, ON AN EMAIL WITH THE
08:57AM 25 ALTERED VERSION SHOWS THAT HE HAD PERSONAL KNOWLEDGE OF

08:57AM 1 UNAUTHORIZED CHANGES.

08:57AM 2 THERE ARE A LOT OF PROBLEMS WITH THAT.

08:57AM 3 FIRST OF ALL, THERE IS NO EVIDENCE -- AND AGAIN, I CANNOT
08:57AM 4 STRESS THIS ENOUGH -- THAT MR. BALWANI HAD ANY KNOWLEDGE OF
08:57AM 5 ANYTHING BEING DONE WITHOUT THE PERMISSION OF THE
08:57AM 6 PHARMACEUTICAL COMPANY; AND SECOND, THERE IS NO REASON, AND
08:57AM 7 THIS JUST GOES TO OUR COMMON SENSE UNDERSTANDING OF HOW WE
08:57AM 8 INTERACT WITH EMAILS, THERE'S NO REASON WHY ANY NORMAL HUMAN
08:57AM 9 WOULD HAVE NOTICED THE PRESENCE OR ABSENCE OF A LOGO AND PUT
08:57AM 10 TOGETHER, OH, SOMETHING UNTOWARD MUST HAVE HAPPENED HERE.

08:57AM 11 THE COURT: WELL, ISN'T THAT WHAT YOU'LL ARGUE IN
08:57AM 12 CLOSING ARGUMENT? IF THERE'S NO EVIDENCE PUT ON, THEN THAT'S
08:57AM 13 WHAT YOUR ARGUMENT WILL BE, THE GOVERNMENT ASKED YOU TO TAKE A
08:58AM 14 GIANT LEAP ACROSS THE GRAND CANYON AND YOU'RE NOT ABLE TO DO
08:58AM 15 THAT.

08:58AM 16 MR. BRECHER: CERTAINLY, YOUR HONOR, THAT REMAINS AN
08:58AM 17 OPTION.

08:58AM 18 BUT THERE ARE OTHER THINGS TO CONSIDER. ONE, FACTUALLY,
08:58AM 19 YOU HAVE TO UNDERSTAND THE CONTEXT BEHIND MR. BALWANI'S
08:58AM 20 UNDERSTANDING -- AND THE GOVERNMENT, BY THE WAY, HAS DONE
08:58AM 21 NOTHING TO DISPUTE THIS.

08:58AM 22 THESE RELATIONSHIPS WERE CONSUMMATED, THEY WERE DEVELOPED,
08:58AM 23 AND THEY LARGELY ENDED BEFORE MR. BALWANI EVEN JOINED THE
08:58AM 24 COMPANY, LONG BEFORE ANY OF THESE MEMOS WERE EXCHANGED WITH
08:58AM 25 THESE ENHANCED VERSIONS.

08:58AM 1 AND BEFORE HE JOINED THE COMPANY, HE RECEIVED -- AND
08:58AM 2 AGAIN, THIS IS UNDISPUTED -- THE SAME REPRESENTATIONS THAT WERE
08:58AM 3 LATER GIVEN TO INVESTORS THAT THERANOS'S TECHNOLOGY HAD BEEN --
08:58AM 4 I BELIEVE IT WAS ROBUSTLY VALIDATED IS WHAT MR. BALWANI WAS
08:58AM 5 TOLD, AND COMPREHENSIVELY VALIDATED IS WHAT INVESTORS WERE
08:58AM 6 TOLD.

08:58AM 7 I DON'T SEE ANY DAYLIGHT THERE, YOUR HONOR.

08:58AM 8 THE COURT: BUT THAT --

08:58AM 9 MR. BRECHER: OH, I APOLOGIZE, YOUR HONOR.

08:58AM 10 THE COURT: BUT, AGAIN, THAT'S EXPLANATORY. WHAT
08:59AM 11 DOES THAT HAVE TO DO WITH THE ADMISSIBILITY OF IT?

08:59AM 12 MR. BRECHER: WELL, YOUR HONOR, IT HAS TO DO WITH
08:59AM 13 THE ADMISSIBILITY BECAUSE OF THE BOUJALY DECISION, I DON'T HAVE
08:59AM 14 IT IN FRONT OF ME, MS. RODRIGUEZ, BUT I BELIEVE IT'S
08:59AM 15 B-O-U-R-J-A-L-Y. I'M SORRY ABOUT THAT.

08:59AM 16 IT REMAINS, UNDER RULE 104, YOUR HONOR, THE GOVERNMENT'S
08:59AM 17 BURDEN TO SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT A
08:59AM 18 CONSPIRACY OR A SCHEME TO DEFRAUD EXISTED AT THE TIME OF THE
08:59AM 19 ALLEGED MISCONDUCT.

08:59AM 20 THE COURT: SURE. NO, I APPRECIATE THAT. I
08:59AM 21 APPRECIATE THAT.

08:59AM 22 I'M JUST -- IF WE PUT THAT ASIDE, AND WE CAN'T FROM YOUR
08:59AM 23 PERSPECTIVE, IF THIS IS BEING INTRODUCED FOR, AND IF THE
08:59AM 24 GOVERNMENT INTENDS TO ARGUE, THEN I THINK YOUR ARGUMENT IS THAT
08:59AM 25 THERE'S NO THRESHOLD HERE.

08:59AM 1 BUT JUST IN AND OF ITSELF, ISN'T IT ADMISSIBLE THAT ON HIS
08:59AM 2 COMPUTER THIS WAS FOUND AND AT A LATER TIME HE SENT THIS? ARE
09:00AM 3 THOSE TWO, THOSE TWO THINGS ADMISSIBLE?

09:00AM 4 MR. BRECHER: I DON'T BELIEVE SO, YOUR HONOR.

09:00AM 5 FIRST OF ALL, THEY'RE CERTAINLY NOT ADMISSIBLE THROUGH
09:00AM 6 DR. CULLEN. SHE CAN'T AUTHENTICATE ANY OF THIS.

09:00AM 7 THE COURT: SURE.

09:00AM 8 MR. BRECHER: SECOND -- AND I DON'T WANT TO FIGHT
09:00AM 9 THE COURT'S HYPOTHETICAL, THAT'S NOT MY --

09:00AM 10 THE COURT: NO, NO.

09:00AM 11 MR. BRECHER: BUT I JUST WANT TO PUSH BACK FOR A
09:00AM 12 MOMENT --

09:00AM 13 THE COURT: YOU SHOULD, YEAH.

09:00AM 14 MR. BRECHER: -- AND SAY, WELL, IF THE ANSWER IS SO
09:00AM 15 ATTENUATED THAT YOU CAN TELL THE JURY THAT IN CLOSING, THAT
09:00AM 16 WOULD READ OUT OF EXISTENCE ALMOST ALL OF THE RULES OF EVIDENCE
09:00AM 17 THAT I CAN THINK OF.

09:00AM 18 THE COURT: NO, I UNDERSTAND.

09:00AM 19 MR. BRECHER: THE POINT OF THE INQUIRY, AND I DON'T
09:00AM 20 THINK THIS IS DISPUTED EITHER, IS FOR THE COURT TO PLAY THAT
09:00AM 21 GATEKEEPING ROLE AND TO ENSURE THAT THERE BE SOME PREDICATE,
09:00AM 22 LEGAL AND FACTUAL, BEFORE POTENTIALLY PREJUDICIAL EVIDENCE IS
09:00AM 23 TURNED OVER TO THE JURY.

09:00AM 24 THE COURT: OKAY.

09:00AM 25 MR. BRECHER: AND PART OF THE REASON FOR THAT,

09:00AM 1 YOUR HONOR, IN THIS CASE IS BECAUSE THE GOVERNMENT'S THEORY IS
09:00AM 2 ONE OF COSCHEMER OR COCONSPIRATOR LIABILITY, IT'S THE EXCEPTION
09:01AM 3 AND NOT THE RULE THAT WE'RE CRIMINALLY RESPONSIBLE FOR THE ACTS
09:01AM 4 OF OTHERS.

09:01AM 5 THE COURT: OKAY.

09:01AM 6 MR. BRECHER: WE HAVE TO HAVE THOSE GUARDRAILS
09:01AM 7 ENFORCED.

09:01AM 8 THE COURT: MR. SCHENK.

09:01AM 9 MR. SCHENK: YOUR HONOR, FIRST, THE DEFENSE SAID
09:01AM 10 THERE ARE TWO HURDLES.

09:01AM 11 THE FIRST IS AUTHENTICATION. THAT IS NOT A HURDLE IN THIS
09:01AM 12 CASE. THERE'S A STIPULATION BETWEEN THE PARTIES THAT EMAILS,
09:01AM 13 SUCH AS 291, ARE AUTOMATIC. 291 IS THE DOCUMENT THAT CULLEN
09:01AM 14 DID NOT RECEIVE WAS SENT FROM HOLMES TO WALGREENS, CC'ING
09:01AM 15 BALWANI.

09:01AM 16 THAT DOCUMENT WE DO INTEND TO INTRODUCE THROUGH DR. CULLEN
09:01AM 17 TODAY. IT IS NOT COMING IN FOR THE TRUTH. IT'S FOR
09:01AM 18 MR. BALWANI'S STATE OF MIND. THAT'S WHAT WE'RE TALKING ABOUT
09:01AM 19 RIGHT NOW, WHAT DID MR. BALWANI KNOW AND WHEN DID HE KNOW IT?

09:01AM 20 AND HE RECEIVED AN EMAIL THAT INCLUDED VERSIONS OF THREE
09:01AM 21 PHARMACEUTICAL REPORTS, ALL WITH THE PHARMACEUTICAL COMPANY'S
09:01AM 22 LOGO ON THEM.

09:01AM 23 IT'S RELEVANT TO HIS KNOWLEDGE AND INTENT VIS-À-VIS THE
09:01AM 24 RELATIONSHIP WITH WALGREENS, AND 291 SHOULD COME IN THROUGH
09:02AM 25 DR. CULLEN. THERE'S NO AUTHENTICATION HURDLE.

09:02AM 1 LET'S NOW TURN TO THE QUESTION OF WHETHER THERE'S PROOF
09:02AM 2 SUFFICIENT TO PROVE A CONSPIRACY AT THE TIME.

09:02AM 3 THAT'S A HURDLE THAT THE GOVERNMENT COULD NOT, IN THEORY,
09:02AM 4 OVERCOME IN THE HOLMES CASE, AND YES, THAT DOCUMENT STILL CAME
09:02AM 5 IN, AND THE REASON THAT IT CAME IN IS BECAUSE IT'S A SUMMARY OF
09:02AM 6 PURE FACTS.

09:02AM 7 THE FACT IS THAT THE VERSION THAT WAS SENT TO
09:02AM 8 SCHERING-PLOUGH DID NOT HAVE A LOGO.

09:02AM 9 THE FACT IS THAT MS. HOLMES CC'D MR. BALWANI ON A VERSION
09:02AM 10 THAT WENT TO WALGREENS THAT DID HAVE A LOGO.

09:02AM 11 IT'S COMPLETELY APPROPRIATE TO ASK A WITNESS ON THE STAND,
09:02AM 12 WHO HAS PERSONAL KNOWLEDGE OF THE ATTACHMENT, THAT SHE DID NOT
09:02AM 13 AUTHORIZE AFFIXING THE LOGO ONTO THE DOCUMENT.

09:02AM 14 AND THOSE ARE, THOSE ARE JUST MERELY FACTS.

09:02AM 15 THE QUESTION THAT THE DEFENSE IS NOW RAISING IS, WHAT IS A
09:02AM 16 PROPER ARGUMENT TO MAKE BASED UPON THOSE FACTS?

09:02AM 17 AND THE TRUTH IS MR. BALWANI SAW BOTH VERSIONS.
09:02AM 18 MR. BALWANI SAW A VERSION WITHOUT THE LOGO AND A VERSION WITH
09:03AM 19 THE LOGO.

09:03AM 20 AND WHAT THE DEFENSE SAYS IS THAT, YOUR HONOR, COMMON
09:03AM 21 SENSE TELLS YOU THAT AN INDIVIDUAL DOESN'T COMB THROUGH THEIR
09:03AM 22 EMAIL IN A SUFFICIENT WAY TO DETERMINE THAT THOSE TWO WERE
09:03AM 23 DIFFERENT.

09:03AM 24 THAT'S AN ARGUMENT REGARDING WEIGHT. THAT'S NOT AN
09:03AM 25 ARGUMENT REGARDING ADMISSIBILITY. THAT'S THE KIND OF ARGUMENT

09:03AM 1 THAT A DEFENSE ATTORNEY MAKES IN CLOSING ARGUMENT. IT'S NOT
09:03AM 2 THE KIND OF ARGUMENT THAT PRECLUDES THE ADMISSION OF THE
09:03AM 3 DOCUMENT.

09:03AM 4 AND I'LL NOTE, IN OPENING THE DEFENSE ACTUALLY OPENED THE
09:03AM 5 DOOR TO MUCH OF THIS. THE DEFENSE SAID THAT MR. BALWANI DID
09:03AM 6 NOT GUARANTEE THE LOAN AND DID NOT JOIN THERANOS BECAUSE
09:03AM 7 ELIZABETH HOLMES WAS HIS GIRLFRIEND, BUT RATHER BECAUSE HE DID
09:03AM 8 HIS DUE DILIGENCE.

09:03AM 9 MR. BALWANI JOINED IN ABOUT SEPTEMBER OF 2009. THAT DUE
09:03AM 10 DILIGENCE OCCURRED BEFORE THEN.

09:03AM 11 SO THEY'VE OPENED THE DOOR TO EVEN A PRE-SEPTEMBER 2009
09:03AM 12 INTERACTION BETWEEN THERANOS AND SOMEONE LIKE SCHERING-PLOUGH
09:03AM 13 BEING RELEVANT.

09:03AM 14 SO THE EXCHANGES BETWEEN DR. CULLEN AND ELIZABETH HOLMES
09:04AM 15 IN THE MONTHS IN 2009 PRECEDING SEPTEMBER ARE STILL RELEVANT
09:04AM 16 BECAUSE THE DEFENSE TOLD THIS JURY THAT MR. BALWANI BECAME
09:04AM 17 AWARE OF THE BUSINESS OF THERANOS BEFORE HE JOINED THERANOS.

09:04AM 18 SO IT IS NO LONGER THE CASE THAT SEPTEMBER 2009 IS OUR
09:04AM 19 MAGIC LINE IN THE SAND OF WHEN RELEVANT EVIDENCE CAN BE
09:04AM 20 ADMITTED IN THIS CASE BECAUSE THAT'S WHEN MR. BALWANI JOINED
09:04AM 21 THERANOS.

09:04AM 22 THAT IS NO LONGER THE CASE.

09:04AM 23 THEY'VE SCRATCHED THAT LINE OUT AND SAID THAT MR. BALWANI
09:04AM 24 PERFORMED DUE DILIGENCE ON FACTS THAT PREDATE HIS JOINING OF
09:04AM 25 THE COMPANY, SUCH AS IN THE MONTHS EARLIER IN THIS RELATIONSHIP

09:04AM 1 WITH, WITH SCHERING-PLOUGH THAT OCCURRED IN THE BEGINNING OF
09:04AM 2 2009 THROUGH A MEETING IN MAY OF 2009 THROUGH AN EXCHANGE OF
09:04AM 3 EMAILS IN LATER 2009.

09:04AM 4 THAT IS ALL OF THE BUCKET OF INFORMATION AVAILABLE TO
09:04AM 5 MR. BALWANI WHEN HE PERFORMS HIS DUE DILIGENCE, AND AS A RESULT
09:04AM 6 IT'S COMPLETELY APPROPRIATE FOR THE GOVERNMENT TO BE ALLOWED TO
09:04AM 7 INTRODUCE THIS EVIDENCE AND ASK THE JURY TO REACH CONCLUSIONS
09:05AM 8 THAT ARE BASED UPON THAT EVIDENCE, SOME DIRECT CONCLUSIONS WHEN
09:05AM 9 HE SEES TWO VERSIONS OF IT, AND SOME CIRCUMSTANTIAL.

09:05AM 10 IT'S IN HIS EMAIL, AND THE DEFENSE IS FREE TO SAY PEOPLE
09:05AM 11 DON'T READ THEIR EMAIL CLOSELY IF THAT'S THE ARGUMENT THEY WANT
09:05AM 12 TO MAKE TO THE JURY, BUT THAT ARGUMENT SHOULD NOT PRECLUDE THE
09:05AM 13 ADMISSION OF THIS EVIDENCE.

09:05AM 14 THE COURT: I THINK WHAT I HEARD DEFENSE COUNSEL SAY
09:05AM 15 IS, WELL, YOU CAN'T LET IT IN BECAUSE 104, THERE'S NO
09:05AM 16 FOUNDATION TO SHOW A CONSPIRACY DURING THE TIME PERIOD OR, AS
09:05AM 17 MS. VOLKAR ARGUED, VICARIOUS LIABILITY.

09:05AM 18 AND I JUST, DO WE EVEN NEED TO GET THERE IS WHAT I'M
09:05AM 19 SAYING? WHY ISN'T THIS JUST FACTS?

09:05AM 20 MR. BRECHER: SO A COUPLE OF ISSUES, YOUR HONOR.

09:05AM 21 MR. SCHENK'S RESPONSE IS, I'M SORRY TO SAY, ENTIRELY
09:05AM 22 UNRESPONSIVE TO THE DEFENSE'S CONCERN.

09:05AM 23 I WANT TO START AT THE END WITH WHAT WE OPENED THE DOOR TO
09:05AM 24 IN OPENING. AND I WOULD INVITE YOUR HONOR, INDEED, I WOULD
09:05AM 25 URGE THE COURT TO GO BACK TO THE TRANSCRIPT OF OUR MARCH 11TH

09:05AM 1 CONVERSATION WITH YOU AND WITH MS. VOLKAR WHERE I WAS CRYSTAL
09:06AM 2 CLEAR THAT BOTH SIDES HAD AN INTEREST IN USING THESE
09:06AM 3 PHARMACEUTICAL RELATIONSHIPS, THE DEFENSE TO SHOW MR. BALWANI'S
09:06AM 4 INTENT BECAUSE OF THOSE REPRESENTATIONS THAT MR. SCHENK JUST
09:06AM 5 REFERENCED, AND THE GOVERNMENT IN SHOWING FALSITY.

09:06AM 6 WE NEVER -- I'VE NEVER SUGGESTED THAT EVIDENCE BEFORE
09:06AM 7 SEPTEMBER 2009 IS IRRELEVANT. IT'S THE QUESTION OF THE PURPOSE
09:06AM 8 FOR WHICH IT CAN BE USED.

09:06AM 9 AND I NOTE, YOUR HONOR, THAT MR. SCHENK COMPLETELY SKIPS
09:06AM 10 OVER THE THRESHOLD SHOWING OF CONSPIRACY.

09:06AM 11 I BELIEVE THERE'S A COMMENT, "THAT MAY HAVE BEEN AN ISSUE
09:06AM 12 IN THE HOLMES TRIAL, BUT THIS CAME IN."

09:06AM 13 I'M STUNNED BY THAT ARGUMENT FOR TWO REASONS. ONE,
09:06AM 14 MR. SCHENK HAS PERSONALLY OBJECTED TO REFERENCES TO RULINGS IN
09:06AM 15 THE HOLMES TRIAL AND SOME SORT OF LAW OF THE CASE THEORY.

09:06AM 16 BUT THE SECOND PROBLEM IS THERE WAS NO SUCH RULING.
09:06AM 17 MS. HOLMES NEVER BOTHERED TO CHALLENGE THE ADMISSIBILITY OF
09:06AM 18 THIS EVIDENCE, PROBABLY BECAUSE -- AND I'M SPECULATING HERE --
09:06AM 19 SHE WAS INTIMATELY INVOLVED IN THE PHARMACEUTICAL RELATIONSHIPS
09:07AM 20 AND KNEW THAT SHE COULDN'T.

09:07AM 21 THAT IS NOT THE CASE FOR MR. BALWANI. WE DID CHALLENGE
09:07AM 22 IT. WE FILED A MOTION AND ARGUED IT AT LENGTH, AND YOUR HONOR
09:07AM 23 HAS APPARENTLY BEEN CONSIDERING IT AT SOME LENGTH.

09:07AM 24 SO WHAT HAPPENED AT THE HOLMES TRIAL IS COMPLETELY
09:07AM 25 IRRELEVANT.

09:07AM 1 THE COURT: I UNDERSTAND. THERE WERE NO OBJECTIONS
09:07AM 2 TO THAT AT THE HOLMES TRIAL.

09:07AM 3 MR. BRECHER: EXACTLY. SO THIS IS A BLANK SLATE.

09:07AM 4 AND THEN SECOND, YOUR HONOR, PUTTING ASIDE I DON'T THINK
09:07AM 5 WE CAN PUT THROUGH THE COCONSPIRATOR LIABILITY POINT BECAUSE
09:07AM 6 THE NATURAL INFERENCE THAT THE GOVERNMENT WANTS THE COURT --
09:07AM 7 WANTS THE JURY TO DRAW IS THAT THESE CHANGES WERE MADE WITHOUT
09:07AM 8 AUTHORIZATION.

09:07AM 9 THEY CAN'T DO THAT BECAUSE OF THE LACK OF A THRESHOLD
09:07AM 10 SHOWING, RIGHT? YOU'RE NOT RESPONSIBLE FOR THE ACTS OF OTHERS
09:07AM 11 ABSENT SOME EXCEPTION UNDER THE LAW, HERE COSCHEMER LIABILITY
09:07AM 12 OR COCONSPIRATOR LIABILITY.

09:07AM 13 AND WE HAVEN'T EVEN TALKED ABOUT THE 403 ARGUMENT THAT WE
09:07AM 14 MADE AND THAT WE ARGUED EXTENSIVELY ON MARCH 11TH, AND THAT IS
09:07AM 15 EVERYONE IN THIS ROOM KNOWS THAT MS. HOLMES ADMITTED TO THIS
09:07AM 16 CONDUCT AND THERE IS NO ADMISSIBLE WAY, WITHOUT SACRIFICING
09:08AM 17 MR. BALWANI'S CONFRONTATION RIGHTS, TO PUT THAT ADDITIONAL
09:08AM 18 PIECE OF CRUCIAL CONTEXT IN FRONT OF THE JURY.

09:08AM 19 SO WE KNOW TWO THINGS, YOUR HONOR. WE KNOW SOMEONE ELSE
09:08AM 20 DID THE ACT, AND WE KNOW THAT MR. BALWANI LACKED -- AND WE KNOW
09:08AM 21 THERE'S NO EVIDENCE, NO AFFIRMATIVE EVIDENCE THAT MR. BALWANI
09:08AM 22 HAD KNOWLEDGE OF THE IMPROPRIETY OF THE ACT.

09:08AM 23 AND THAT'S THE SORT OF SUBTLE NUANCE THAT IS BEING SKIPPED
09:08AM 24 OVER HERE IS EVEN IF THE COURT WERE TO BELIEVE -- AND I THINK,
09:08AM 25 FRANKLY, IT'S IMPLAUSIBLE -- THAT RECEIVING THIS ATTACHMENT ON

09:08AM 1 MARCH 19TH AND THEN RECEIVING A DIFFERENT VERSION ON
09:08AM 2 APRIL 10TH, AND THESE ARE LENGTHY ATTACHMENTS, YOUR HONOR, THAT
09:08AM 3 MR. BALWANI COULD HAVE PUT TWO AND TWO TOGETHER AND HAD
09:08AM 4 KNOWLEDGE OF THE ACT OF ALTERING THE REPORTS.

09:08AM 5 THERE'S NO EVIDENCE FROM WHICH ANYONE COULD INFER
09:08AM 6 KNOWLEDGE OF THE UNAUTHORIZED ALTERATION.

09:08AM 7 SO I JUST THINK IT'S A REAL PROBLEM.

09:08AM 8 THE COURT: BUT SHOULDN'T THAT FACT COME IN, THOUGH?
09:08AM 9 I MEAN, THEY'RE FACTS. HE RECEIVED BOTH OF THOSE THINGS AT THE
09:08AM 10 TIMES THAT YOU SAID, AND SHOULDN'T THE JURY HAVE THAT?

09:09AM 11 MR. BRECHER: I DON'T THINK SO, YOUR HONOR, BECAUSE
09:09AM 12 THAT LAYS THE GROUNDWORK FOR THE GOVERNMENT TO MAKE AN
09:09AM 13 IMPERMISSIBLE ARGUMENT.

09:09AM 14 IF WE WERE TALKING ABOUT 2013, 2014, I WON'T CONCEDE THE
09:09AM 15 POINT, BUT I WILL AT LEAST ACKNOWLEDGE THAT WE WOULD NOT BE IN
09:09AM 16 AS STRONG AS A POSITION.

09:09AM 17 BUT WE'RE NOT TALKING ABOUT EVENTS OF 2013 AND 2014. AND
09:09AM 18 DATES MATTER. THEY MATTER VITALLY.

09:09AM 19 WE'RE TALKING ABOUT MARCH AND APRIL OF 2010. THE
09:09AM 20 GOVERNMENT MUST MAKE THE REQUISITE SHOWING OF A CONSPIRACY OR
09:09AM 21 SCHEME TO DEFRAUD IN MARCH OR APRIL 2010, AND I DON'T THINK THE
09:09AM 22 FACTS BEAR THAT OUT.

09:09AM 23 THE COURT: OKAY.

09:09AM 24 MR. SCHENK.

09:09AM 25 MR. SCHENK: YOUR HONOR, THE DEFENSE IS ASKING THE

09:09AM 1 COURT TO BELIEVE MS. HOLMES'S TESTIMONY WHEN SHE TESTIFIED THAT
09:09AM 2 SHE MADE THE APPLICATION OF THE LOGOS.

09:09AM 3 MS. HOLMES DID NOT EXCULPATE MR. BALWANI IN THAT
09:09AM 4 TESTIMONY. MS. HOLMES TOOK RESPONSIBILITY FOR IT, BUT SHE
09:09AM 5 DIDN'T SAY THAT MR. BALWANI KNEW NOTHING ABOUT IT OR
09:09AM 6 MR. BALWANI DIDN'T PLAY A ROLE IN IT.

09:09AM 7 SHE ALSO DIDN'T INCULPATE MR. BALWANI.

09:09AM 8 BUT IT'S RICH THAT THE DEFENSE WANTS TO ACCEPT CERTAIN
09:10AM 9 FACTS THAT MS. HOLMES TESTIFIED TO AND NOT OTHERS, AND THE
09:10AM 10 POINT OF THAT IS THAT THE GOVERNMENT IS NOT REQUIRED TO
09:10AM 11 ESTABLISH THE EXISTENCE OF A CONSPIRACY AS A PREREQUISITE TO
09:10AM 12 ADMITTING THESE FACTS. THEY ARE FACTS THAT DR. CULLEN HAS
09:10AM 13 PRIMARY KNOWLEDGE OF. SHE WAS A WITNESS TO THE EXCHANGE OF THE
09:10AM 14 FIRST VERSION, THE VERSION WITHOUT THE LOGOS, AND IT IS
09:10AM 15 THEREFORE APPROPRIATE TO ASK HER QUESTIONS ABOUT A SECOND
09:10AM 16 VERSION.

09:10AM 17 WELL, THE DEFENSE IS SAYING WHEN YOU MAKE ARGUMENTS ABOUT
09:10AM 18 THAT VIS-À-VIS MR. BALWANI, THERE ARE CERTAIN FACTS THAT ARE
09:10AM 19 ALSO RELEVANT, THAT IS, THE EXTENT TO WHICH MR. BALWANI HAD
09:10AM 20 KNOWLEDGE OF IT.

09:10AM 21 THAT IS ALL WEIGHT. THAT IS NOT ADMISSIBILITY.

09:10AM 22 MR. BRECHER: YOUR HONOR, IF I MAY JUST VERY
09:10AM 23 BRIEFLY?

09:10AM 24 FIRST, ANY RICHNESS IS ONE THAT WE SHARE WITH THE
09:10AM 25 GOVERNMENT. THE GOVERNMENT ALSO BELIEVES CERTAIN THINGS THAT

09:10AM 1 MS. HOLMES SAID, AND DOESN'T BELIEVE CERTAIN THINGS THAT SHE
09:10AM 2 SAID, AND ONE OF THE THINGS THAT THEY DEFINITELY BELIEVED IS
09:11AM 3 HER ADMISSION THAT SHE USED THESE LOGOS. THEY TRUMPETED THIS.

09:11AM 4 BUT SECOND, YOUR HONOR, THE POINT ABOUT MS. HOLMES NOT
09:11AM 5 EXCULPATING MR. BALWANI GOES PRECISELY TO THE ISSUE THAT WE
09:11AM 6 ARGUED ABOUT ON MARCH 11TH. IT REALLY IS DÉJÀ VU OVER AGAIN.

09:11AM 7 WHEN I SAY WE CAN'T PUT THAT CONTEXT IN FRONT OF THE JURY
09:11AM 8 WITHOUT SACRIFICING MR. BALWANI'S CONFRONTATION RIGHTS, THAT'S
09:11AM 9 PRECISELY THE ISSUE THAT I'M HONING IN ON. NO ONE ASKED THE
09:11AM 10 QUESTIONS. MS. HOLMES'S LAWYERS DIDN'T FEEL LIKE IT, AND THE
09:11AM 11 GOVERNMENT DIDN'T HAVE AN INCENTIVE TO ASK, WELL, DID YOU
09:11AM 12 NOTE -- DID YOU TELL, MR. BALWANI? DID HE KNOW ABOUT THIS?

09:11AM 13 SHE'S NOT ON THE STAND. MR. BALWANI -- WE DON'T HAVE THE
09:11AM 14 OPPORTUNITY TO CROSS-EXAMINE. WE KNOW THAT SHE MADE THIS
09:11AM 15 ADMISSION. WE WOULD HAVE FOLLOWED UP ON WHETHER ON WHETHER SHE
09:11AM 16 SHARED THIS PLAN WITH MR. BALWANI, AND WE LACKED THE
09:11AM 17 OPPORTUNITY TO DO SO AND THE GOVERNMENT LACKED THE INCENTIVE TO
09:11AM 18 DO SO.

09:11AM 19 THAT'S ALL I HAVE, YOUR HONOR, UNLESS THE COURT HAS
09:11AM 20 FURTHER QUESTIONS.

09:11AM 21 THE COURT: MR. SCHENK?

09:12AM 22 MR. SCHENK: SUBMIT IT.

09:12AM 23 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

09:12AM 24 WE HAVE THE WITNESS HERE, IS IT DR. PANDORI?

09:12AM 25 MR. SCHENK: YES, YOUR HONOR.

09:12AM 1 THE COURT: ALL RIGHT. WE'LL TAKE A BREAK AND BRING
09:12AM 2 DR. PANDORI ON AND COMPLETE HIS TESTIMONY THIS MORNING.
09:12AM 3 WHAT DO WE HAVE LEFT WITH HIM DO YOU THINK? ANY IDEA?
09:12AM 4 MR. CAZARES: 1 TO 1.5.
09:12AM 5 THE COURT: ALL RIGHT. THANK YOU.
09:12AM 6 MR. BRECHER: THANK YOU, YOUR HONOR.
09:12AM 7 (RECESS FROM 9:12 A.M. UNTIL 9:23 A.M.)
09:23AM 8 (JURY IN AT 9:23 A.M.)
09:23AM 9 THE COURT: THANK YOU. GOOD MORNING.
09:23AM 10 WE'RE BACK ON THE RECORD. ALL COUNSEL ARE PRESENT.
09:23AM 11 MR. BALWANI IS PRESENT.
09:23AM 12 OUR JURY AND ALTERNATES ARE PRESENT.
09:23AM 13 GOOD MORNING, LADIES AND GENTLEMEN.
09:23AM 14 BEFORE WE BEGIN, LET ME ASK YOU THAT QUESTION AGAIN.
09:23AM 15 DURING THE BREAK DID ANY OF YOU HAVE CAUSE TO DO ANY
09:23AM 16 INVESTIGATION, DISCUSS OR COME UPON ANY INFORMATION REGARDING
09:24AM 17 THIS CASE?
09:24AM 18 IF SO, IF YOU WOULD PLEASE RAISE YOUR HAND.
09:24AM 19 I SEE NO HANDS. THANK YOU.
09:24AM 20 WE ARE GOING TO RESUME, I BELIEVE, WITH DR. PANDORI,
09:24AM 21 MR. BOSTIC?
09:24AM 22 MR. BOSTIC: YES, YOUR HONOR, THE WITNESS IS
09:24AM 23 AVAILABLE.
09:24AM 24 THE COURT: GREAT. LET'S CALL HIM, RECALL HIM.
09:24AM 25 SIR, IF YOU WOULD JUST RETURN TO THE STAND, PLEASE.

09:24AM 1 AGAIN, MAKE YOURSELF COMFORTABLE.

09:24AM 2 **(GOVERNMENT'S WITNESS, MARK PANDORI, WAS RESWORN.)**

09:24AM 3 THE COURT: AND WHEN YOU ARE COMFORTABLE -- YES, YOU
09:24AM 4 CAN REMOVE YOUR MASK.

09:24AM 5 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE JUST STATE YOUR
09:25AM 6 NAME AGAIN, PLEASE.

09:25AM 7 THE WITNESS: MARK PANDORI.

09:25AM 8 THE COURT: THANK YOU.

09:25AM 9 COUNSEL.

09:25AM 10 MR. CAZARES: AND, YOUR HONOR, MAY I HAND UP A
09:25AM 11 BINDER TO THE COURT?

09:25AM 12 THE COURT: YES.

09:25AM 13 MR. CAZARES: THE DEFENSE ALREADY HAS A COPY,
09:25AM 14 YOUR HONOR.

09:25AM 15 THE COURT: GREAT.

09:25AM 16 MR. CAZARES: (HANDING.)

09:25AM 17 AND MAY I REMOVE MY MASK, YOUR HONOR?

09:25AM 18 THE COURT: YES.

09:25AM 19 **CROSS-EXAMINATION (RESUMED)**

09:25AM 20 BY MR. CAZARES:

09:25AM 21 Q. GOOD MORNING, DR. PANDORI.

09:25AM 22 A. GOOD MORNING.

09:25AM 23 Q. I WANT TO PICK UP WHERE WE LEFT OFF ON FRIDAY. AND WITHIN
09:25AM 24 THE BENCH THERE YOU HAVE SOME BINDERS, AND I BELIEVE IN YOUR
09:25AM 25 VOLUME 2 YOU SHOULD HAVE AN EXHIBIT MARKED NUMBER 20279.

09:25AM 1 20279.

09:25AM 2 A. YES.

09:25AM 3 Q. DO YOU HAVE 20279 IN FRONT OF YOU?

09:25AM 4 A. YES.

09:25AM 5 Q. OKAY. AND DO YOU RECALL THAT WE WERE DISCUSSING THIS

09:25AM 6 EXHIBIT? IT'S AN EMAIL DATED MAY 30, 2014.

09:26AM 7 DO YOU SEE THAT?

09:26AM 8 A. YES.

09:26AM 9 Q. AND THE COVER SHEET APPEARS TO BE ADDRESSED TO

09:26AM 10 DR. ADAM ROSENDORFF; CORRECT?

09:26AM 11 A. YES.

09:26AM 12 Q. AND ITS SUBJECT LINE IS TRANSITION REPORT.

09:26AM 13 DO YOU SEE THAT AS WELL?

09:26AM 14 A. YES.

09:26AM 15 Q. AND I ASKED YOU ON FRIDAY TO TAKE A LOOK AT THE

09:26AM 16 ATTACHMENT.

09:26AM 17 CAN YOU DO THAT AGAIN?

09:26AM 18 DO YOU SEE THERE IS A MULTI-PAGE MEMO ATTACHED TO THE

09:26AM 19 EMAIL?

09:26AM 20 DO YOU SEE THAT?

09:26AM 21 A. YES.

09:26AM 22 Q. AND AT THE TOP OF THE MEMO IT HAS A TYPE STAMPED 52930?

09:26AM 23 A. IT HAS THE NUMBERS 5, 29, AND 30 ON THERE.

09:26AM 24 Q. AND THE INITIALS M.W. PANDORI.

09:26AM 25 DO YOU SEE THAT?

09:26AM 1 A. YES.

09:26AM 2 Q. AND THOSE ARE YOUR INITIALS?

09:26AM 3 A. THOSE ARE MY INITIALS, AND MY LAST NAME.

09:26AM 4 Q. OKAY. AND WHEN I ASKED YOU ABOUT THE EMAIL AND THE MEMO,

09:26AM 5 THE TRANSITION REPORT REFLECTED IN 20279 ON FRIDAY, YOU

09:26AM 6 TESTIFIED THAT YOU HAD NEVER SEEN THE ATTACHED REPORT BEFORE;

09:27AM 7 CORRECT?

09:27AM 8 A. NO. I TESTIFIED THAT IT WAS UNFAMILIAR TO ME.

09:27AM 9 Q. BUT YOU FIRST SAID THAT YOU HAD NEVER SEEN THE ATTACHED

09:27AM 10 REPORT BEFORE; CORRECT?

09:27AM 11 A. I DON'T RECALL MY EXACT WORDS, BUT I RECALL NOT

09:27AM 12 RECOGNIZING THE DOCUMENT.

09:27AM 13 Q. THERE SHOULD BE A BINDER THERE ON YOUR DESK WITH SOME

09:27AM 14 PRIOR STATEMENTS. I'M LOOKING FOR EXHIBIT 28456, 28456.

09:27AM 15 DO YOU HAVE THAT?

09:27AM 16 A. YES.

09:27AM 17 Q. AT 28456, IT'S A TRANSCRIPT FROM FRIDAY.

09:27AM 18 DO YOU SEE THAT?

09:27AM 19 A. YES.

09:27AM 20 Q. APRIL 1, '22?

09:27AM 21 A. YES.

09:27AM 22 Q. AND IF YOU COULD TURN TO PAGE 1865. ARE YOU AT 1865?

09:27AM 23 A. NO.

09:27AM 24 Q. OKAY. SO LET ME KNOW WHEN YOU'RE THERE.

09:28AM 25 A. I AM.

09:28AM 1 Q. AND LOOK AT LINES 1 TO 3. READ THAT TO YOURSELF.

09:28AM 2 A. YES, I SEE THAT.

09:28AM 3 Q. AND YOU TESTIFIED ON FRIDAY THAT YOU NEVER SAW THE REPORT

09:28AM 4 BEFORE; CORRECT?

09:28AM 5 A. THAT'S WHAT IT SAYS.

09:28AM 6 Q. OKAY. WHEN I SHOWED YOU EXHIBIT 20279 ON FRIDAY, YOU ALSO

09:28AM 7 SAID THAT YOU DID NOT SEND THE EMAIL AND ATTACHED REPORT TO

09:28AM 8 DR. ROSENDORFF; CORRECT?

09:28AM 9 A. WELL, NO. I SAID THE EMAIL DOES NOT HAVE A FROM LINE, SO

09:28AM 10 I CAN'T TELL WHO SENT THAT EMAIL.

09:28AM 11 Q. WITHIN THAT SAME EXHIBIT, 28456, THE TRANSCRIPT FROM

09:28AM 12 FRIDAY, PAGE 1863.

09:28AM 13 A. YES, I'M THERE.

09:28AM 14 Q. LINE 16 TO 17, READ THAT TO YOURSELF?

09:29AM 15 A. YES.

09:29AM 16 Q. YOU TESTIFIED ON FRIDAY THAT YOU DID NOT SEND THE EMAIL

09:29AM 17 AND REPORT TO DR. ROSENDORFF; CORRECT?

09:29AM 18 A. THAT'S WHAT IT SAYS HERE.

09:29AM 19 Q. OKAY. AND THAT'S THE TRANSCRIPT FROM FRIDAY?

09:29AM 20 A. I'D HAVE TO GO TO THE FRONT OF THE DOCUMENT TO CONFIRM

09:29AM 21 THAT.

09:29AM 22 Q. BUT THE DOCUMENT THAT YOU'RE LOOKING AT, EXHIBIT 28456,

09:29AM 23 SAYS THAT YOU TOLD THIS JURY THAT YOU DID NOT SEND THIS EMAIL

09:29AM 24 AND REPORT TO DR. ROSENDORFF; CORRECT?

09:29AM 25 MR. BOSTIC: OBJECTION.

09:29AM 1 THE COURT: SUSTAINED.

09:29AM 2 BY MR. CAZARES:

09:29AM 3 Q. WITH RESPECT TO EXHIBIT 20279, DR. PANDORI, UPON ALSO
09:29AM 4 SEEING THAT, YOU DID NOT RECALL AUTHORIZING THE REPORT; CORRECT?

09:29AM 5 A. I DO NOT RECALL AUTHORIZING IT.

09:29AM 6 MR. CAZARES: YOUR HONOR, PURSUANT TO THE FOUNDATION
09:29AM 7 WE LAID ON FRIDAY, MOVE TO ADMIT EXHIBIT 20279 AND THE
09:29AM 8 ATTACHMENT.

09:29AM 9 MR. BOSTIC: NO OBJECTION.

09:29AM 10 THE COURT: IT'S ADMITTED.

09:29AM 11 (DEFENDANT'S EXHIBIT 20279 WAS RECEIVED IN EVIDENCE.)

09:29AM 12 MR. CAZARES: MAY WE PUT THE FIRST PAGE UP ON THE
09:30AM 13 SCREEN?

09:30AM 14 THE COURT: IT MAY BE PUBLISHED.

09:30AM 15 BY MR. CAZARES:

09:30AM 16 Q. AND YOU CAN LOOK AT THE HARD COPY DOCUMENT OR THE SCREEN,
09:30AM 17 DR. PANDORI, WHEN THAT COMES UP.

09:30AM 18 DO YOU SEE IT UP ON THE SCREEN, DR. PANDORI,
09:30AM 19 EXHIBIT 20279?

09:30AM 20 A. YES.

09:30AM 21 Q. OKAY. AND AT THE TOP OF THE MESSAGE, IT APPEARS TO BE A
09:30AM 22 TRUNCATED EMAIL, IT SAYS TO ADAM_ROSENDORFF@THERANOS.COM.

09:30AM 23 DO YOU SEE THAT?

09:30AM 24 A. YES, I SEE WHAT YOU'VE HIGHLIGHTED.

09:30AM 25 Q. OKAY. AND THE SUBJECT IS TRANSITION REPORT?

09:30AM 1 A. YES.

09:30AM 2 Q. 5/30/2014, THAT'S MAY 30TH, 2014.

09:30AM 3 DO YOU SEE THAT?

09:30AM 4 A. I SEE THAT.

09:30AM 5 Q. AND THERE'S A REFERENCE DOCUMENT ATTACHED, IT SAYS

09:30AM 6 TRANSITION MWP 05 2014.DOCX.

09:31AM 7 DO YOU SEE THAT?

09:31AM 8 A. YES.

09:31AM 9 Q. AND THE EMAIL SAYS "ATTACHED.

09:31AM 10 "A TRANSITION REPORT.

09:31AM 11 "HOPE THIS HELPS.

09:31AM 12 MARK."

09:31AM 13 DO YOU SEE THAT?

09:31AM 14 A. I SEE WHAT YOU'VE HIGHLIGHTED, YES.

09:31AM 15 Q. THOSE ARE YOUR WORDS; CORRECT?

09:31AM 16 A. THERE'S NO FROM LINE ON THE EMAIL. I DON'T KNOW IF I --

09:31AM 17 Q. I'M NOT ASKING YOU THAT. THOSE ARE YOUR WORDS --

09:31AM 18 THE COURT: LET HIM FINISH HIS ANSWER, PLEASE.

09:31AM 19 GO AHEAD.

09:31AM 20 THE WITNESS: NORMALLY IF I'M ASKED THAT QUESTION

09:31AM 21 ABOUT AN EMAIL, I WOULD WANT TO SEE THE FROM LINE.

09:31AM 22 BY MR. CAZARES:

09:31AM 23 Q. WE CAN GET THERE. BUT I'M ASKING YOU, ARE THE TYPEWRITTEN

09:31AM 24 WORDS IN EXHIBIT 20279 UP ON THE SCREEN YOUR TYPEWRITTEN WORDS

09:31AM 25 TO DR. ROSENDORFF?

09:31AM 1

A. I DON'T KNOW.

09:31AM 2

Q. IF YOU CAN TURN TO THE NEXT PAGE, WE CAN PUT IT UP THE

09:31AM 3

SCREEN, THE ATTACHMENT REFERENCED IN THE EMAIL, AND YOU SEE AT

09:31AM 4

THE TOP THAT WE MENTIONED BEFORE, THERE'S THE NUMBER 5/29/30.

09:31AM 5

DO YOU SEE THAT?

09:31AM 6

A. YES.

09:31AM 7

Q. AND ON 5-29 OF 2014, MAY 29TH OF 2014, YOU WERE STILL

09:32AM 8

WORKING AT THERANOS; CORRECT?

09:32AM 9

A. I DON'T KNOW.

09:32AM 10

Q. IT'S A YES OR NO.

09:32AM 11

A. I DON'T KNOW WHAT DATE. DO YOU HAVE ANY DOCUMENTS THAT I

09:32AM 12

CAN REFRESH MY MEMORY ON WHAT DAY I LEFT?

09:32AM 13

Q. SO IT'S YOUR TESTIMONY THAT YOU DON'T RECALL WHEN YOU LEFT

09:32AM 14

THERANOS PRECISELY?

09:32AM 15

A. I DON'T REMEMBER THE EXACT DATE. I TRIED TO DOUBLE-CHECK

09:32AM 16

MY MEMORY IN THAT REGARD WITH SOME DOCUMENTATION. IT LOOKS

09:32AM 17

LIKE --

09:32AM 18

Q. DR. PANDORI, THERE'S NO FURTHER QUESTION PENDING.

09:32AM 19

MR. BOSTIC: I ASK THAT THE WITNESS BE ALLOWED TO

09:32AM 20

COMPLETE HIS ANSWER.

09:32AM 21

ALSO, OBJECTION. ARGUMENTATIVE.

09:32AM 22

THE COURT: LET ME LET YOU WAIT FOR HIS NEXT

09:32AM 23

QUESTION AND THEN YOU CAN ANSWER.

09:32AM 24

BY MR. CAZARES:

09:32AM 25

Q. DR. PANDORI, THE ATTACHMENT TO EXHIBIT 20279, CONTINUING

09:32AM 1 ON THAT FIRST PAGE, THERE'S A HEADER AND YOU WILL SEE IT SAYS
09:32AM 2 TRANSITION INDEX.

09:32AM 3 DO YOU SEE THAT?

09:32AM 4 A. YES.

09:32AM 5 Q. AND THEN THERE ARE FOUR CATEGORIES: SUBJECT A, HIV/HCV
09:32AM 6 SMALLER VOLUME PROJECT.

09:32AM 7 DO YOU SEE THAT?

09:32AM 8 A. YES.

09:32AM 9 Q. AND HIV AND HCV ARE INFECTIOUS DISEASE MATTERS THAT YOU
09:33AM 10 WORKED ON AT THERANOS; CORRECT?

09:33AM 11 A. CORRECT. HCV I RECALL. HIV LESS SO.

09:33AM 12 Q. AND THEN SUBJECT MATTER B, EMC/BUGS.

09:33AM 13 BUGS RELATES TO THE INFECTIOUS DISEASE LAB AT THERANOS;
09:33AM 14 CORRECT?

09:33AM 15 A. THAT WAS MY UNDERSTANDING.

09:33AM 16 Q. AND YOU DID SOME WORK IN RELATION TO THE INFECTIOUS
09:33AM 17 DISEASE LAB AT THERANOS; CORRECT?

09:33AM 18 A. YES.

09:33AM 19 Q. AND SUBJECT MATTER C SAYS, DAILY CLIA ADMIN ISSUES.

09:33AM 20 DO YOU SEE THAT?

09:33AM 21 A. YES.

09:33AM 22 Q. AND YOU DID SOME ADMINISTRATION ISSUES, MANAGERIAL MATTERS
09:33AM 23 THAT YOU HANDLED WITHIN THE CLIA LAB AT THERANOS; CORRECT?

09:33AM 24 A. CORRECT.

09:33AM 25 Q. AND THEN UNDER SUBJECT MATTER D, THERE'S AN OTHER, OTHER

09:33AM 1

NOTES.

09:33AM 2

DO YOU SEE THAT?

09:33AM 3

A. YES.

09:33AM 4

Q. AND YOU STILL DON'T RECALL AUTHORIZING THIS DOCUMENT? IS

09:33AM 5

THAT YOUR TESTIMONY?

09:33AM 6

A. I DON'T RECALL.

09:33AM 7

Q. IF WE COULD TURN TO PAGE 006 OF THE DOCUMENT IN THE LOWER

09:33AM 8

QUARTILE, AND PUT THAT ON THE SCREEN?

09:33AM 9

A. YES.

09:33AM 10

Q. AND UNDER THE SUBJECT MATTER D, THE FOURTH OF THE ISSUES

09:34AM 11

IDENTIFIED ON THE FIRST PAGE, YOU SEE HERE IT SAYS, OTHER

09:34AM 12

NOTES.

09:34AM 13

DO YOU SEE THAT?

09:34AM 14

A. YES.

09:34AM 15

Q. AND THEN THE PARAGRAPH BEGINS, "EDISONS" COLON.

09:34AM 16

DO YOU SEE THAT?

09:34AM 17

A. YES.

09:34AM 18

Q. AND THOSE ARE YOUR WORDS; CORRECT? THIS PARAGRAPH WAS

09:34AM 19

WRITTEN BY YOU?

09:34AM 20

A. I DON'T RECALL.

09:34AM 21

Q. THE PARAGRAPHS CONTINUES, "THE PRIMARY CONCERN IN THIS

09:34AM 22

SECTION IS THE AVAILABLE NUMBER OF DEVICES."

09:34AM 23

DO YOU SEE THAT?

09:34AM 24

A. YES.

09:34AM 25

Q. AND THAT'S EDISON DEVICES IS THE PRIMARY CONCERN REFLECTED

09:34AM 1 IN THIS DOCUMENT; CORRECT?

09:34AM 2 A. I BELIEVE THAT WOULD BE THE ANTECEDENT, YEP.

09:34AM 3 Q. THE NUMBER OF DEVICES RELATED -- THAT THIS IS RELATING TO
09:34AM 4 IS EDISONS; CORRECT?

09:34AM 5 A. YES.

09:34AM 6 Q. AND THEN THE PARAGRAPH CONTINUES, "FOR FT4, VIT D, AND
09:34AM 7 TSH," LET'S STOP THERE.

09:34AM 8 FT4 IS A TEST THAT WAS RUN ON THE EDISON DEVICE AT THAT
09:34AM 9 TIME; CORRECT?

09:34AM 10 A. YES.

09:34AM 11 Q. AND VIT D, VITAMIN D WAS ALSO A TEST RUN ON THE EDISON AT
09:35AM 12 THAT TIME; CORRECT?

09:35AM 13 A. CORRECT.

09:35AM 14 Q. AND THEN TSH WAS ALSO RUN ON EDISON?

09:35AM 15 A. YES.

09:35AM 16 Q. AND THAT WAS USED FOR PATIENT TESTING AT THE TIME;
09:35AM 17 CORRECT?

09:35AM 18 A. CORRECT.

09:35AM 19 Q. AND THEN THE PARAGRAPH CONTINUES.

09:35AM 20 "AT LEAST A DOUBLING OF THE NUMBER OF UNITS IS NECESSARY,
09:35AM 21 IN MY OPINION."

09:35AM 22 DO YOU SEE THAT?

09:35AM 23 A. I SEE THAT.

09:35AM 24 Q. AND THOSE ARE YOUR WORDS, CORRECT, "AT LEAST A DOUBLING OF
09:35AM 25 THE NUMBER OF UNITS," MEANING EDISONS, "IS NECESSARY IN MY

09:35AM 1
09:35AM 2
09:35AM 3
09:35AM 4
09:35AM 5
09:35AM 6
09:35AM 7
09:35AM 8
09:35AM 9
09:35AM 10
09:35AM 11
09:35AM 12
09:35AM 13
09:35AM 14
09:36AM 15
09:36AM 16
09:36AM 17
09:36AM 18
09:36AM 19
09:36AM 20
09:36AM 21
09:36AM 22
09:36AM 23
09:36AM 24
09:36AM 25

OPINION."

CORRECT? THOSE ARE YOUR WORDS?

A. I DON'T REMEMBER EVER WRITING THAT.

Q. THIS IS MAY 30, 2014, AN EMAIL TO DR. ROSENDORFF THAT YOU SENT; IS THAT RIGHT?

MR. BOSTIC: OBJECTION. ASKED AND ANSWERED.

THE COURT: SUSTAINED.

BY MR. CAZARES:

Q. MAY 30, 2014 IS MORE THAN A WEEK AFTER THE MAY 19TH, 2014, CONVERSATION THAT YOU SAY YOU HAD WITH MS. HOLMES AND MR. BALWANI THAT LED TO YOUR RESIGNATION; CORRECT?

A. CAN YOU REPEAT THE QUESTION?

Q. MAY 19TH, 2014, IS THE DATE THAT YOU TOLD THIS JURY THAT YOU HAD A CONVERSATION WITH ELIZABETH HOLMES AND SUNNY BALWANI THAT LED TO YOUR RESIGNATION?

A. I THINK IT WAS ON OR AROUND THAT DATE.

Q. YOU SAID WITHIN A DAY OR SO; CORRECT?

A. RIGHT.

Q. BECAUSE MAY 19TH IS YOUR BIRTHDAY AND THAT'S WHY YOU REMEMBER IT; CORRECT?

A. RIGHT. BUT I STILL DON'T KNOW EXACTLY WHAT DAY I LEFT.

IF YOU HAVE A DOCUMENT WHICH CAN HELP ASSIST MY MEMORY IN THAT REGARD, THAT WOULD BE VERY HELPFUL.

Q. YOU'RE HAVING A TOUGH TIME REMEMBERING THINGS, YEAH?

A. WHEN I LEFT, THE DATE THAT I LEFT THE COMPANY, WHICH

09:36AM 1 HAPPENED EIGHT YEARS AGO, YES.

09:36AM 2 Q. THE DATE OF EXHIBIT 20279, WHICH IS MAY 30, 2014, IS
09:36AM 3 SUBSEQUENT TO YOUR BIRTHDAY; CORRECT?

09:36AM 4 A. YES.

09:36AM 5 Q. OKAY. BACK TO PAGE 6 OF THE EXHIBIT. THE DOCUMENT
09:36AM 6 CONTINUES, "THIS IS ONE OF THE SECTIONS WHERE MORE STAFF (LAB
09:36AM 7 TECHS) WOULD BENEFIT THE MOST."

09:36AM 8 DO YOU SEE THAT?

09:36AM 9 A. TO WHERE ARE YOU REFERRING?

09:36AM 10 Q. AGAIN UNDER OTHER NOTES?

09:36AM 11 A. YES.

09:37AM 12 Q. "EDISONS: THE PRIMARY CONCERN IN THIS SECTION IS THE
09:37AM 13 AVAILABLE NUMBER OF DEVICES."

09:37AM 14 DO YOU SEE THAT?

09:37AM 15 A. I DO.

09:37AM 16 Q. AND THEN "FOR FT4, VIT D AND TSH, AT LEAST A DOUBLING OF
09:37AM 17 THE NUMBER OF UNITS IS NECESSARY, IN MY OPINION."

09:37AM 18 DO YOU SEE THAT?

09:37AM 19 A. I DO.

09:37AM 20 Q. AND THEN IT FOLLOWS, "THIS IS ONE OF THE SECTIONS WHERE
09:37AM 21 MORE STAFF (LAB TECHS) WOULD BENEFIT THE MOST."

09:37AM 22 DO YOU SEE THAT?

09:37AM 23 A. YES.

09:37AM 24 Q. AND AT THE TIME THERANOS WAS HIRING MORE STAFF IN THE LAB;
09:37AM 25 CORRECT?

09:37AM 1

A. YES.

09:37AM 2

Q. AND THEN THE MEMO CONTINUES.

09:37AM 3

09:37AM 4

09:37AM 5

"I HAVE BEEN INFORMED THAT THE UNITS REQUIRE SERVICE WITH HIGH FREQUENCY, SO A CONTINUOUS MONITORING OF THIS SECTION IS WARRANTED."

09:37AM 6

DO YOU SEE THAT?

09:37AM 7

A. YES.

09:37AM 8

Q. YOU WROTE THAT; CORRECT?

09:37AM 9

A. I DON'T RECALL.

09:37AM 10

09:37AM 11

09:37AM 12

Q. NOW, YOU HAD TESTIFIED BEFORE TO THIS JURY ON FRIDAY THAT YOU TOLD DR. ROSENDORFF ON MANY OCCASIONS TO STOP USING THE EDISONS.

09:37AM 13

THAT'S WHAT YOU TOLD THIS JURY; CORRECT?

09:37AM 14

A. YES.

09:37AM 15

09:38AM 16

Q. THE MEMO REFLECTED HERE AT 20279 SAYS TO DOUBLE THE NUMBER OF EDISONS ON MAY 30, 2014; CORRECT?

09:38AM 17

A. CORRECT.

09:38AM 18

Q. IT DOESN'T SAY STOP USING THEM IN THIS MEMO, DOES IT?

09:38AM 19

A. CORRECT.

09:38AM 20

09:38AM 21

09:38AM 22

Q. DR. PANDORI, IF YOU COULD TAKE A LOOK WITHIN THE DOCUMENTS THAT YOU HAVE FOR EXHIBIT 20498, 20498. THAT WOULD BE IN THE SMALL BINDER IN FRONT OF YOU THAT SAYS PANDORI, MARK PANDORI ON THE FRONT.

09:39AM 23

09:39AM 24

20498.

09:39AM 25

A. I'VE LOCATED IT.

09:39AM 1 Q. OKAY. 20498 IS ANOTHER EMAIL DATED MAY 30, 2014.

09:39AM 2 DO YOU SEE THAT?

09:39AM 3 A. YES.

09:39AM 4 Q. AND THAT EMAIL APPEARS TO BE FROM YOURSELF.

09:39AM 5 DO YOU SEE THAT?

09:39AM 6 A. YES.

09:39AM 7 Q. TO MONA RAMAMURTHY, THE HEAD OF HR; CORRECT?

09:39AM 8 A. YES.

09:39AM 9 Q. AND TO MR. BALWANI AT THEIR THERANOS EMAIL ADDRESSES?

09:39AM 10 A. YES.

09:39AM 11 Q. AND THE SUBJECT LINE, TRANSITION REPORT.

09:39AM 12 DO YOU SEE THAT AS WELL?

09:39AM 13 A. YES.

09:39AM 14 MR. CAZARES: YOUR HONOR, MOVE TO ADMIT

09:39AM 15 EXHIBIT 20498. THIS IS ALSO THE SUBJECT TO THE EMAIL

09:39AM 16 STIPULATION.

09:39AM 17 MR. BOSTIC: NO OBJECTION.

09:39AM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:39AM 19 (DEFENDANT'S EXHIBIT 20498 WAS RECEIVED IN EVIDENCE.)

09:39AM 20 BY MR. CAZARES:

09:39AM 21 Q. SO YOU SEE, DR. PANDORI, UP ON THE SCREEN THE EMAIL

09:40AM 22 APPEARS TO BE FROM YOURSELF.

09:40AM 23 DO YOU SEE THAT?

09:40AM 24 A. YES.

09:40AM 25 Q. AND THEN TO MS. RAMAMURTHY AND MR. BALWANI.

09:40AM 1 DO YOU SEE THAT?

09:40AM 2 A. YES.

09:40AM 3 Q. AND SO YOU SENT THIS EMAIL; CORRECT?

09:40AM 4 A. I DON'T RECALL. ACCORDING TO THE HEADER, YES.

09:40AM 5 Q. MAY 30, 2014. SO YOU WERE STILL WORKING THAT DAY AT
09:40AM 6 THERANOS; CORRECT?

09:40AM 7 A. I DON'T RECALL WHAT DAY I LEFT THERANOS.

09:40AM 8 Q. AND THE ATTACHMENT TO THIS DOCUMENT, IT SAYS TRANSITION
09:40AM 9 MWP 05 2014.DOCX.

09:40AM 10 DO YOU SEE THAT?

09:40AM 11 A. I DO.

09:40AM 12 Q. AND THAT'S THE SAME DOCUMENT REFERENCED IN 20279 THAT WE
09:40AM 13 JUST LOOKED AT; CORRECT?

09:40AM 14 A. I BELIEVE SO, YES.

09:40AM 15 Q. AND AGAIN, THE SUBJECT LINE OF THIS EMAIL IS TRANSITION
09:40AM 16 REPORT.

09:40AM 17 DO YOU SEE THAT?

09:40AM 18 A. YES.

09:40AM 19 Q. AND THE EMAIL FROM YOURSELF READS, "ATTACHED.

09:40AM 20 "A DOCUMENT DETAILING THE STATE OF VARIOUS PROJECTS OR

09:40AM 21 WORKS IN THE CLIA/BUGS LABORATORIES. IT CONTAINS ADDITIONAL

09:40AM 22 TRANSITIONAL INFORMATION DETAILING THE ADMINISTRATIVE FUNCTIONS

09:40AM 23 WHICH I HAVE BEEN PERFORMING AS NEW EMPLOYEES ARRIVE AND ON A

09:41AM 24 DAILY BASIS.

09:41AM 25 "I WAS GOING TO SHARE THIS WITH ADAM WITH YOUR PERMISSION.

09:41AM 1 MARK PANDORI."

09:41AM 2 DO YOU SEE THAT?

09:41AM 3 A. I DO SEE THAT.

09:41AM 4 Q. AND YOU SENT THAT?

09:41AM 5 A. ACCORDING TO THE HEADER.

09:41AM 6 Q. AND YOU SENT THE MEMO REFLECTED AND ATTACHED IN

09:41AM 7 EXHIBIT 20498 TO DR. ROSENDORFF AS WE'VE ALREADY SEEN; CORRECT?

09:41AM 8 A. WELL, THAT EMAIL DOESN'T HAVE A FROM LINE ON IT, SO I

09:41AM 9 DON'T RECALL.

09:41AM 10 Q. SO YOU DON'T -- YOU'RE TELLING THIS JURY YOU DID NOT SEND

09:41AM 11 THE TRANSITION REPORT TO DR. ROSENDORFF?

09:41AM 12 IS THAT WHAT YOU'RE SAYING?

09:41AM 13 MR. BOSTIC: ASKED AND ANSWERED.

09:41AM 14 THE COURT: SUSTAINED.

09:41AM 15 BY MR. CAZARES:

09:41AM 16 Q. IF WE CAN TURN TO THE FRONT PAGE OF THE ATTACHMENT ON

09:41AM 17 20498?

09:41AM 18 A. I'M THERE.

09:41AM 19 Q. AND WE'LL PUT IT UP ON THE SCREEN FOR THE JURY.

09:42AM 20 AND YOU SEE IT APPEARS TO BE THE SAME MEMO THAT WAS

09:42AM 21 REFLECTED IN EXHIBIT 20279; CORRECT?

09:42AM 22 A. IT DOES.

09:42AM 23 Q. AND IF WE COULD FLIP BACK TO SUBJECT MATTER D ON PAGE 6,

09:42AM 24 THIS MEMO TO MR. BALWANI AND MS. RAMAMURTHY ALSO INCLUDES A

09:42AM 25 PASSAGE ABOUT THE EDISONS.

09:42AM 1 DO YOU SEE THAT?

09:42AM 2 A. YES.

09:42AM 3 Q. AND THIS SAME MEMO TO MS. RAMAMURTHY AND MR. BALWANI ALSO
09:42AM 4 READS, "THE PRIMARY CONCERN IN THIS SECTION IS THE AVAILABLE
09:42AM 5 NUMBER OF DEVICES."

09:42AM 6 DO YOU SEE THAT?

09:42AM 7 A. YES, I DO.

09:42AM 8 Q. AND THIS MEMO TO MR. BALWANI ALSO READS, "FOR FT4, VIT D,
09:42AM 9 AND TSH, AT LEAST A DOUBLING OF THE NUMBER OF UNITS IS
09:42AM 10 NECESSARY, IN MY OPINION."

09:42AM 11 DO YOU SEE THAT?

09:42AM 12 A. YES.

09:42AM 13 Q. AND THIS IS A DOCUMENT ATTACHED TO AN EMAIL FROM YOU TO
09:42AM 14 MR. BALWANI; CORRECT?

09:42AM 15 A. TO MR. BALWANI, YES.

09:42AM 16 Q. OKAY. AND THIS IS MAY 30, 2014; CORRECT?

09:42AM 17 A. THAT'S WHAT IS DATED ON THE EMAIL.

09:42AM 18 Q. THIS WOULD HAVE BEEN AFTER YOUR DISCUSSION WITH MS. HOLMES
09:42AM 19 AND MR. BALWANI ON OR ABOUT YOUR BIRTHDAY, MAY 19TH, 2014;
09:43AM 20 CORRECT?

09:43AM 21 A. I DON'T HAVE THE DATE STRAIGHT. I NEED TO KNOW WHAT DAY
09:43AM 22 THAT HAPPENED. IF YOU HAVE ANY DOCUMENTS, THAT MIGHT HELP ME.

09:43AM 23 Q. YOU TOLD THIS JURY THAT YOU HAD THE DISCUSSION WITH
09:43AM 24 MR. BALWANI AND MS. HOLMES, TRIGGERED BY THE "WIRED" ARTICLE
09:43AM 25 THAT LED TO YOUR RESIGNATION WITHIN FIVE MINUTES, ON YOUR

09:43AM 1 BIRTHDAY, MAY 19TH, 2014, GIVE OR TAKE A DAY; CORRECT?

09:43AM 2 A. CORRECT.

09:43AM 3 Q. AND THIS MEMO THAT YOU'RE SENDING TO MR. BALWANI ON

09:43AM 4 MAY 30, 2014, IS SUBSEQUENT TO THAT DISCUSSION?

09:43AM 5 A. IT IS, YES.

09:43AM 6 Q. AND YOU ALSO TESTIFIED TO THIS JURY THAT YOU HAD TWO

09:43AM 7 DISCUSSIONS WITH MR. BALWANI ABOUT THE USE OF EDISONS; CORRECT?

09:43AM 8 A. I DON'T REMEMBER IF I SAID TWO, BUT THERE WERE

09:43AM 9 DISCUSSIONS.

09:43AM 10 Q. YOU SAID YOU HAD TWO DISCUSSIONS, ONE WITH MR. BALWANI

09:43AM 11 WHILE THE TWO OF YOU WERE MOVING DEVICES OR EQUIPMENT IN WHICH

09:43AM 12 YOU TOLD HIM THAT THE LAB SHOULD STOP USING THE EDISONS;

09:43AM 13 CORRECT?

09:43AM 14 A. I DID LET HIM KNOW THAT.

09:43AM 15 Q. AND THEN YOU SAID YOU HAD ANOTHER DISCUSSION WITH

09:44AM 16 MR. BALWANI ABOUT THE USE OF EDISONS WHERE YOU TOLD HIM TO STOP

09:44AM 17 USING THE EDISONS IN YOUR OFFICE WHERE MR. BALWANI WAS

09:44AM 18 ACCOMPANIED BY TWO PROJECT MANAGERS; CORRECT?

09:44AM 19 A. WELL, AT THAT TIME I DIDN'T TELL HIM THAT. I THINK THAT

09:44AM 20 WAS PART OF THE DISCUSSION.

09:44AM 21 Q. AND YOU TESTIFIED ON FRIDAY THAT BOTH OF THOSE DISCUSSIONS

09:44AM 22 WITH MR. BALWANI ABOUT THE USE OF THE EDISONS TOOK PLACE IN

09:44AM 23 MARCH OR APRIL OF 2014; CORRECT?

09:44AM 24 THAT'S WHAT YOU TESTIFIED TO?

09:44AM 25 A. CORRECT.

09:44AM 1 Q. SO THIS EMAIL WITH THE ATTACHMENT AND THE REPORT TO
09:44AM 2 MR. BALWANI ON MAY 30, 2014, IS SUBSEQUENT TO THOSE DISCUSSIONS
09:44AM 3 YOU SAY YOU HAD WITH MR. BALWANI ABOUT THE USE OF EDISONS;
09:44AM 4 CORRECT?

09:44AM 5 A. THEY'RE SUBSEQUENT.

09:44AM 6 Q. OKAY. AND HERE IN LOOKING AT 20498, THE MEMO THAT YOU
09:44AM 7 SENT TO MR. BALWANI, UNDER OTHER NOTES, EDISONS, YOU DID NOT
09:44AM 8 INCLUDE ANY LANGUAGE THERE ABOUT A CONCERN THAT YOU HAD WITH
09:44AM 9 THE ACCURACY OF EDISONS, DID YOU?

09:44AM 10 A. NO.

09:44AM 11 Q. IN 20498, IN THE MEMO TO MR. BALWANI, YOU DID NOT WRITE
09:45AM 12 THAT YOU HAD CONCERN ABOUT PATIENT HARM RELATING TO THE
09:45AM 13 ACCURACY OF EDISONS, DID YOU?

09:45AM 14 A. NO, I DID NOT.

09:45AM 15 Q. YOU CAN SET THAT ASIDE.
09:45AM 16 IN THE DOCUMENT BINDERS THAT YOU HAVE, IF YOU COULD PLEASE
09:45AM 17 LOOK FOR 20277. 20277. IT SHOULD BE IN VOLUME 2.

09:46AM 18 A. I'M THERE.

09:46AM 19 Q. OKAY. AND 20277 APPEARS TO BE AN EMAIL DATED MAY 21ST OF
09:46AM 20 2014.
09:46AM 21 DO YOU SEE THAT?

09:46AM 22 A. YES.
09:46AM 23 MR. CAZARES: I APOLOGIZE, YOUR HONOR.

09:46AM 24 Q. AND THE EMAIL APPEARS TO BE A MESSAGE FROM YOURSELF TO
09:46AM 25 DR. ROSENDORFF?

09:46AM 1 A. YES.

09:46AM 2 Q. AND THE EMAIL REFERENCES MEETINGS BETWEEN YOURSELF AND

09:46AM 3 DR. ROSENDORFF AND THE CLIA STAFF?

09:47AM 4 A. YES.

09:47AM 5 Q. AND YOU'RE ESSENTIALLY WRITING A DRAFT MESSAGE TO

09:47AM 6 DR. ROSENDORFF BEFORE SENDING IT TO THE CLIA STAFF; CORRECT?

09:47AM 7 A. CORRECT.

09:47AM 8 Q. AND IT WAS YOUR REGULAR PRACTICE TO USE EMAIL TO

09:47AM 9 COMMUNICATE WITH DR. ROSENDORFF REGARDING CLIA MATTERS AT THAT

09:47AM 10 TIME; CORRECT?

09:47AM 11 A. CORRECT.

09:47AM 12 Q. AND YOU RECALL HAVING THOSE MEETINGS WITH THE CLIA STAFF

09:47AM 13 THAT ARE REFERENCED IN THE EMAIL?

09:47AM 14 A. NOT AT THIS POINT I DON'T, BUT THEY ARE REFERRED TO HERE.

09:47AM 15 Q. BUT YOU DID HAVE MEETINGS WITH CLIA STAFF ABOUT ISSUES

09:47AM 16 RELATING TO THE CLINICAL LAB REGULARLY, DIDN'T YOU?

09:47AM 17 A. YES.

09:47AM 18 Q. INCLUDING BEFORE YOU LEFT THERANOS IN MAY OF 2014;

09:47AM 19 CORRECT?

09:47AM 20 A. CORRECT.

09:47AM 21 Q. AND IT WAS YOUR UNDERSTANDING THAT THOSE EMAILS AND

09:47AM 22 COMMUNICATIONS THAT YOU HAD WITH DR. ROSENDORFF WERE MAINTAINED

09:47AM 23 AT THERANOS DURING THE REGULAR COURSE OF BUSINESS; CORRECT?

09:47AM 24 A. I WOULD ASSUME SO.

09:47AM 25 MR. CAZARES: YOUR HONOR, MOVE TO ADMIT 20277.

09:48AM 1 MR. BOSTIC: NO OBJECTION.

09:48AM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:48AM 3 (DEFENDANT'S EXHIBIT 20277 WAS RECEIVED IN EVIDENCE.)

09:48AM 4 MR. CAZARES: IF WE CAN PUT THAT UP ON THE SCREEN

09:48AM 5 AND JUST HIGHLIGHT THE TOP PORTION FIRST, THOUGH.

09:48AM 6 Q. AND THE LATTER OF THE MESSAGES IN THE EXHIBIT 20277

09:48AM 7 APPEARS TO BE FROM DR. ROSENDORFF TO YOURSELF.

09:48AM 8 DO YOU SEE THAT?

09:48AM 9 A. YES.

09:48AM 10 Q. OKAY. AND IT'S MAY 21, 2014.

09:48AM 11 DO YOU SEE THAT AS WELL?

09:48AM 12 A. I DO.

09:48AM 13 Q. AND MAY 21, 2014, THAT'S TWO DAYS AFTER YOUR BIRTHDAY THAT

09:48AM 14 YEAR; CORRECT?

09:48AM 15 A. YES.

09:48AM 16 Q. SO AFTER OR AROUND THE TIME OF THE PURPORTED CONVERSATIONS

09:48AM 17 THAT YOU HAD WITH MR. BALWANI AND MS. HOLMES THAT LED TO YOUR

09:48AM 18 RESIGNATION; CORRECT?

09:48AM 19 A. WELL, AGAIN, I DON'T REMEMBER WHAT DATE THAT WAS EXACTLY.

09:48AM 20 Q. AND IN THE MESSAGE AT 20277, DR. ROSENDORFF WRITES TO

09:48AM 21 YOURSELF, "MARK.

09:48AM 22 "I THINK THAT LOOKS JUST FINE.

09:48AM 23 "THANKS.

09:48AM 24 "ADAM."

09:49AM 25 DO YOU SEE THAT?

09:49AM 1

A. YES.

09:49AM 2

Q. AND IF WE CAN SCROLL DOWN TO THE LOWER PORTION OF THE
EMAIL.

09:49AM 3

09:49AM 4

AND THIS APPEARS TO BE A MESSAGE FROM YOURSELF TO
DR. ROSENDORFF, MAY 21, 2014.

09:49AM 5

09:49AM 6

DO YOU SEE THAT?

09:49AM 7

A. CORRECT.

09:49AM 8

Q. AND YOU SAY, "IS THIS OK," QUESTION MARK?

09:49AM 9

A. THAT'S RIGHT.

09:49AM 10

Q. AND IT APPEARS THAT YOU'RE ASKING FOR DR. ROSENDORFF'S
APPROVAL OF THE MESSAGE.

09:49AM 11

09:49AM 12

DO YOU SEE THAT?

09:49AM 13

A. YES.

09:49AM 14

Q. AND IN THE MESSAGE YOU WROTE IN THE DRAFT, "DEAR CLIA
LABORATORY MEMBERS,

09:49AM 15

09:49AM 16

"ADAM AND I WERE ABLE TO DISCUSS WITH ONE ANOTHER THE
RESULTS OF OUR ONE ON ONE CONVERSATIONS WITH EACH OF YOU, AND
ONE OF EVERYONE'S PRIMARY CONCERNS IS WORK HOURS."

09:49AM 17

09:49AM 18

09:49AM 19

DO YOU SEE THAT?

09:49AM 20

A. YES.

09:49AM 21

Q. AND THAT'S A REFERENCE TO CONCERNS OF THE CLIA STAFF THAT
YOU'RE REPORTING TO DR. ROSENDORFF; CORRECT?

09:49AM 22

09:49AM 23

A. YES.

09:49AM 24

Q. AND AS FAR AS CONCERNS BY THE CLIA STAFF, THERE IS NO
MENTION HERE IN THIS EMAIL ABOUT ACCURACY AND RELIABILITY OF

09:49AM 25

09:49AM 1 THE EDISON; CORRECT?

09:50AM 2 A. THAT'S NOT DISCUSSED IN THIS EMAIL AS FAR AS I CAN TELL.

09:50AM 3 Q. THE PRIMARY CONCERN HERE IS WORK HOURS; CORRECT?

09:50AM 4 A. CORRECT.

09:50AM 5 Q. AND AT THE BOTTOM OF THE MESSAGE YOU FINISH, "THANKS FOR

09:50AM 6 ALL OF THE CANDOR AND SUGGESTIONS YOU EACH PROVIDED IN THE

09:50AM 7 COURSE OF YOUR INDIVIDUAL MEETINGS. STEP BY STEP, WE CAN

09:50AM 8 ADDRESS THESE ISSUES IN OUR AIM TO IMPROVE THE CLIA LABORATORY.

09:50AM 9 "SINCERELY,

09:50AM 10 "MARK PANDORI."

09:50AM 11 DO YOU SEE THAT?

09:50AM 12 A. I DO.

09:50AM 13 Q. AND YOU RECALL THE MEETINGS WITH THE CLIA STAFF?

09:50AM 14 A. I REMEMBER MEETING WITH THEM IN GROUPS, AND OCCASIONALLY

09:50AM 15 SOME OF THEM INDIVIDUALLY. BUT I DON'T REMEMBER MEETING WITH

09:50AM 16 THEM INDIVIDUALLY IN A SERIES LIKE THIS.

09:50AM 17 Q. YOU CAN SET THAT ASIDE. YOU CAN SET THAT EXHIBIT ASIDE.

09:50AM 18 AND IF YOU COULD TAKE A LOOK AT EXHIBIT 20496. 20496.

09:51AM 19 AND THAT SHOULD BE IN THE SMALLER BINDER THAT SAYS MARK PANDORI

09:51AM 20 ON THE FRONT.

09:51AM 21 A. I'M THERE.

09:51AM 22 Q. AND 20496, THE MESSAGE AT THE TOP APPEARS TO BE FROM

09:51AM 23 MS. RAMAMURTHY TO YOURSELF AT YOUR THERANOS ADDRESS.

09:51AM 24 DO YOU SEE THAT?

09:51AM 25 A. YES.

09:51AM 1 Q. AND DATED 5/27/2014.

09:51AM 2 DO YOU SEE THAT?

09:51AM 3 A. I DO.

09:51AM 4 Q. AND THE SUBJECT LINE IS TRANSITION.

09:51AM 5 DO YOU SEE THAT?

09:51AM 6 A. YES.

09:51AM 7 Q. AND MS. RAMAMURTHY WAS THE HEAD OF HR?

09:51AM 8 A. THAT'S MY UNDERSTANDING.

09:51AM 9 Q. AND YOU COMMUNICATED WITH HER RELATING TO YOUR EXIT

09:51AM 10 PROCESS FROM THERANOS; CORRECT?

09:51AM 11 A. CORRECT.

09:51AM 12 Q. AND THIS APPEARS TO BE A PART OF THAT PROCESS; CORRECT?

09:51AM 13 A. I HAVE TO READ THE EMAIL.

09:51AM 14 Q. WHY DON'T YOU TAKE A LOOK AT IT AND REFRESH YOUR

09:51AM 15 RECOLLECTION.

09:52AM 16 A. I'VE READ THE EMAIL.

09:52AM 17 Q. AND YOU SAID THAT YOU HAD COMMUNICATIONS WITH

09:52AM 18 MS. RAMAMURTHY RELATING TO YOUR EXIT PROCESS FROM THERANOS;

09:52AM 19 CORRECT?

09:52AM 20 A. I DID.

09:52AM 21 Q. AND THIS MESSAGE AT 20496 APPEARS TO BE A PART OF THAT

09:52AM 22 PROCESS; CORRECT?

09:52AM 23 A. THE WORD "TRANSITION" IMPLIES IT.

09:52AM 24 MR. CAZARES: MOVE TO ADMIT 20496, YOUR HONOR.

09:52AM 25 MR. BOSTIC: NO OBJECTION.

09:52AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:52AM 2 (DEFENDANT'S EXHIBIT 20496 WAS RECEIVED IN EVIDENCE.)

09:52AM 3 BY MR. CAZARES:

09:52AM 4 Q. AND JUST LOOKING AT THE HEADER OF THE MESSAGE, IT STARTS
09:52AM 5 WITH -- AGAIN, IT APPEARS TO BE FROM YOURSELF -- FROM
09:52AM 6 MS. RAMAMURTHY, I'M SORRY, TO YOURSELF, MAY 27, 2014.

09:52AM 7 DO YOU SEE THAT?

09:52AM 8 A. I DO.

09:52AM 9 Q. AND THE SUBJECT MATTER IS TRANSITION.

09:52AM 10 DO YOU SEE THAT?

09:52AM 11 A. YES.

09:52AM 12 Q. AND IN THE MESSAGE FROM MS. RAMAMURTHY SHE WRITES, "HI
09:52AM 13 MARK,

09:52AM 14 "SUNNY IS OUT TODAY SO HE WANTED ME TO CONNECT WITH YOU ON
09:52AM 15 TRANSITION. HE SAID THAT YOU CAN WORK FROM HOME TOMORROW AND
09:53AM 16 THURSDAY TO FOCUS ON DOCUMENTING THE FOLLOWING:"

09:53AM 17 AND THE FIRST BULLET IS "HIV AND HCV MICRO VOLUME
09:53AM 18 PROJECT."

09:53AM 19 DO YOU SEE THAT?

09:53AM 20 A. YES.

09:53AM 21 Q. AND THE SECOND BULLET IS, "PROCESS YOU WERE GOING TO SET
09:53AM 22 UP IN EMC FOR THE BUGS LAB."

09:53AM 23 DO YOU SEE THAT?

09:53AM 24 A. YES.

09:53AM 25 Q. AND THEN THAT BULLET CONTINUES, "PLEASE INCLUDE ALL

09:53AM 1 CULTURE EQUIPMENT THAT YOU BOUGHT AND DETAILS ABOUT WHAT YOU
09:53AM 2 PLANNED ON DOING THERE. "

09:53AM 3 DO YOU SEE THAT?

09:53AM 4 A. I DO, YES.

09:53AM 5 Q. AND THERE'S A THIRD BULLET IN THE MESSAGE FROM
09:53AM 6 MS. RAMAMURTHY TO YOURSELF THAT SAYS, "ANYTHING ELSE THAT YOU
09:53AM 7 BELIEVE NEEDS TO BE DOCUMENTED FOR EFFECTIVE TRANSITION
09:53AM 8 PURPOSES."

09:53AM 9 DO YOU SEE THAT?

09:53AM 10 A. I DO SEE THAT.

09:53AM 11 Q. SO YOU WERE INVITED TO INCLUDE ANYTHING ELSE THAT YOU
09:53AM 12 BELIEVED NEEDED TO BE COMMUNICATED TO DR. ROSENDORFF IN THE
09:53AM 13 TRANSITION MEMO THAT WE HAVE ALREADY TAKEN A LOOK AT; CORRECT?

09:53AM 14 A. IT APPEARS THAT I WAS INVITED TO SHARE INFORMATION WITH
09:53AM 15 THEM.

09:53AM 16 Q. AND YOU DID SO; CORRECT?

09:53AM 17 A. WE'VE SEEN THAT IN EMAILS TODAY.

09:53AM 18 Q. AND THOSE WERE YOUR WORDS IN THE TRANSITION MEMO TO
09:54AM 19 DR. ROSENDORFF AND TO MR. BALWANI; CORRECT?

09:54AM 20 A. WELL, THE TRANSITION MEMO I DON'T RECALL SENDING
09:54AM 21 DR. ROSENDORFF. BUT OTHERWISE THE ONE SENT TO MR. BALWANI AND
09:54AM 22 MS. RAMAMURTHY, WE DID LOOK AT.

09:54AM 23 Q. YOU DON'T DENY SENDING THE TRANSITION MEMO TO
09:54AM 24 DR. ROSENDORFF, DO YOU?

09:54AM 25 A. I SAID I DON'T RECALL.

09:54AM 1 Q. YOU CAN SAID THAT ASIDE.

09:54AM 2 IF YOU COULD TAKE A LOOK AT EXHIBIT 20501. 20501.

09:54AM 3 THAT SHOULD ALSO BE IN THAT SMALL BINDER.

09:54AM 4 A. YES.

09:54AM 5 Q. DO YOU HAVE 20501?

09:54AM 6 A. YES.

09:54AM 7 Q. NOW, 20501 APPEARS TO BE A MESSAGE FROM YOURSELF TO

09:54AM 8 MR. BALWANI DATED MAY 30, 2014.

09:54AM 9 DO YOU SEE THAT?

09:54AM 10 A. YES.

09:54AM 11 Q. AND THE SUBJECT MATTER IS HCV SMALL VOLUME THOUGHTS.

09:55AM 12 DO YOU SEE THAT?

09:55AM 13 A. YES, I DO.

09:55AM 14 Q. AND HCV WAS ONE OF THE ISSUES ADDRESSED IN THAT TRANSITION

09:55AM 15 MEMO; CORRECT?

09:55AM 16 A. IT WAS IN THAT DOCUMENT.

09:55AM 17 Q. BECAUSE HCV WAS AN INFECTIOUS DISEASE ISSUE THAT YOU DID

09:55AM 18 SOME WORK ON AT THERANOS; CORRECT?

09:55AM 19 A. YES.

09:55AM 20 MR. CAZARES: MOVE TO ADMIT 20501, YOUR HONOR.

09:55AM 21 MR. BOSTIC: YOUR HONOR, HEARSAY. ALSO

09:55AM 22 AUTHENTICATION.

09:55AM 23 I'LL NOTE THAT THE DOCUMENT DOESN'T HAVE A BATES NUMBER.

09:55AM 24 THE COURT: DO YOU WANT TO LAY A FOUNDATION?

09:55AM 25 MR. CAZARES: YES, YOUR HONOR.

09:55AM 1 Q. DR. PANDORI, IN YOUR TIME AT THERANOS, YOU USED EMAIL TO
09:55AM 2 COMMUNICATE WITH BOTH THE CLIA LAB AS WELL AS MANAGEMENT;
09:55AM 3 CORRECT?

09:55AM 4 A. CORRECT.

09:55AM 5 Q. INCLUDING MR. BALWANI?

09:55AM 6 A. OH, YEAH.

09:55AM 7 Q. AND IN THOSE MESSAGES, YOU DID YOUR BEST TO TRY TO
09:55AM 8 COMMUNICATE MATTERS RELATING TO THE LAB ACCURATELY IN ORDER TO
09:55AM 9 PERFORM YOUR BUSINESS; CORRECT?

09:56AM 10 A. YES.

09:56AM 11 Q. AND IT'S YOUR UNDERSTANDING THAT THOSE MESSAGES WERE
09:56AM 12 MAINTAINED BY THERANOS IN THE REGULAR COURSE OF BUSINESS;
09:56AM 13 CORRECT?

09:56AM 14 A. IT'S MY UNDERSTANDING.

09:56AM 15 Q. AND THIS HCV PROJECT -- OR HCV WAS AN INFECTIOUS DISEASE
09:56AM 16 AND AN ISSUE THAT YOU DID SOME WORK ON DURING YOUR TIME AT
09:56AM 17 THERANOS; CORRECT?

09:56AM 18 A. CORRECT.

09:56AM 19 Q. AND AS WE SAW IN THE TRANSITION MEMO, YOU COMMUNICATED
09:56AM 20 UPDATES TO MR. BALWANI AND MS. RAMAMURTHY RELATED TO YOUR WORK
09:56AM 21 ON THE HCV PROJECT AS REFLECTED IN EXHIBIT 20501; CORRECT?

09:56AM 22 A. HCV WAS A TOPIC IN THAT DOCUMENT.

09:56AM 23 Q. AND THAT'S AN ISSUE THAT YOU WORKED ON; CORRECT?

09:56AM 24 A. YES.

09:56AM 25 MR. CAZARES: MOVE TO ADMIT 20501, YOUR HONOR.

09:56AM 1 MR. BOSTIC: THE DEFENDANT'S STATEMENT IS STILL
09:56AM 2 HEARSAY, AND ALSO AUTHENTICATION.

09:57AM 3 MR. CAZARES: THE ISSUE RELATES TO, YOUR HONOR,
09:57AM 4 PRIOR INCONSISTENT STATEMENTS ABOUT THE TIME OR TRANSITION, AS
09:57AM 5 WELL AS STATE OF MIND OF MR. BALWANI RELATING TO DR. PANDORI'S
09:57AM 6 EXIT.

09:57AM 7 THE COURT: IS THAT AN ISSUE?

09:57AM 8 MR. CAZARES: YEAH.

09:57AM 9 THE COURT: YOUR CLIENT'S STATE OF MIND AS TO THE
09:57AM 10 EXIT?

09:57AM 11 MR. CAZARES: THE BASIS, THE REASONS FOR THE EXIT.

09:57AM 12 THE COURT: ALL RIGHT. I'LL ADMIT THIS UNDER
09:57AM 13 803(6) .

09:57AM 14 (DEFENDANT'S EXHIBIT 20501 WAS RECEIVED IN EVIDENCE.)

09:57AM 15 THE COURT: AND IT MAY BE PUBLISHED.

09:57AM 16 BY MR. CAZARES:

09:57AM 17 Q. WE HAVE 20501 UP ON THE SCREEN.

09:57AM 18 DO YOU SEE THAT, DR. PANDORI?

09:57AM 19 A. YES.

09:57AM 20 Q. AND AGAIN, THE LATTER OF THE MESSAGES IN THE CHAIN APPEARS
09:57AM 21 TO BE FROM YOURSELF TO MR. BALWANI?

09:57AM 22 A. IT DOES.

09:57AM 23 Q. MAY 30, 2014. SUBJECT MATTER HCV SMALL VOLUME THOUGHTS.

09:58AM 24 DO YOU SEE THAT?

09:58AM 25 A. I DO SEE IT.

09:58AM 1 Q. AND FURTHER DOWN IN THE CHAIN, GOING TO THE BOTTOM OF THE
09:58AM 2 FIRST PAGE, IT APPEARS TO BE A MESSAGE FROM YOURSELF TO
09:58AM 3 MR. BALWANI, MAY 30, 2014, WHERE YOU WROTE, "SUNNY,
09:58AM 4 "WANTED TO MAKE SURE I GAVE YOU MY HCV THOUGHTS YOU ASKED
09:58AM 5 FOR, IN CASE THEY HELP."
09:58AM 6 DO YOU SEE THAT?
09:58AM 7 A. I DO.
09:58AM 8 Q. AND YOU WROTE THIS MESSAGE TO MR. BALWANI; CORRECT?
09:58AM 9 A. YEAH, I DON'T RECALL, BUT IT'S INDICATED IN THE HEADER
09:58AM 10 THAT I DID.
09:58AM 11 Q. NOW, ON FRIDAY YOU TESTIFIED IN RELATION TO THAT
09:58AM 12 CONVERSATION WITH MS. HOLMES AND MR. BALWANI ON OR ABOUT YOUR
09:58AM 13 BIRTHDAY, MAY 19TH, 2014, THAT AFTER THAT CONVERSATION, WITHIN
09:58AM 14 FIVE MINUTES YOU RESIGNED; CORRECT?
09:58AM 15 A. YES.
09:58AM 16 Q. AND YOU HAD NO FURTHER COMMUNICATIONS WITH MR. BALWANI
09:58AM 17 AFTER THAT MEETING.
09:58AM 18 THAT'S WHAT YOU TESTIFIED; CORRECT?
09:58AM 19 A. YEAH, I DON'T REMEMBER TALKING WITH MR. BALWANI AFTER
09:58AM 20 THAT.
09:58AM 21 Q. BUT YOU DID COMMUNICATE WITH HIM BY EMAIL APPARENTLY;
09:58AM 22 CORRECT?
09:58AM 23 A. WELL, WE WOULD HAVE TO GET THE DATES STRAIGHTENED OUT FOR
09:59AM 24 ME TO ANSWER THAT WITH CONFIDENCE.
09:59AM 25 Q. MAY 30, 2014, IS REFLECTED IN 20501; CORRECT?

09:59AM 1 A. YES.

09:59AM 2 Q. AND THAT'S AFTER YOUR BIRTHDAY, MAY 19TH, 2014; CORRECT?

09:59AM 3 A. CORRECT.

09:59AM 4 Q. IN THE MESSAGE YOU WRITE, AFTER YOU SAID YOU WANTED TO

09:59AM 5 GIVE MY HCV THOUGHTS YOU ASKED FOR IN CASE THEY HELP, YOU

09:59AM 6 PROVIDED SOME INFORMATION RELATING TO THE HCV SMALL VOLUME

09:59AM 7 PROJECT AT THE LAB; CORRECT?

09:59AM 8 A. IT SAYS THAT THERE, YEP.

09:59AM 9 Q. AND THEN MR. BALWANI RESPONDED BACK TO YOU, "THANKS FOR

09:59AM 10 THE SUMMARY.

09:59AM 11 "I AGREE. THIS IS PRECISELY WHAT WE WERE EXPECTING AND

09:59AM 12 PLANNING TO DO SO THIS IS IN LINE WITH OUR ESTIMATES."

09:59AM 13 DO YOU SEE THAT?

09:59AM 14 A. YES.

09:59AM 15 Q. AND "AS YOU KNOW, THIS IS THERANOS'S TRADE SECRET AND

09:59AM 16 SOMETHING WE INTEND TO OFFER SOON."

09:59AM 17 DO YOU SEE THIS?

09:59AM 18 A. YES.

09:59AM 19 Q. AND THIS HCV SMALL PROJECT VOLUME RELATED TO TESTS OR A

10:00AM 20 TEST RUN ON THE EDISON DEVICE; CORRECT?

10:00AM 21 A. NO, THAT'S NOT CORRECT.

10:00AM 22 Q. IT WAS RELATING TO THERANOS'S FINGERSTICK SMALL SAMPLE

10:00AM 23 TESTING; CORRECT?

10:00AM 24 A. WELL, THERE WERE TWO HCV TESTS THAT WERE DISCUSSED IN MY

10:00AM 25 TIME AT THERANOS. ONE OF THEM IS WHAT IS KNOWN AS A VIRAL LOAD

10:00AM 1 TEST WHERE YOU'RE MEASURING AND COUNTING PARTICLES GENERALLY
10:00AM 2 USING THE VIRUS'S NUCLEIC ACID TO MAKE THAT COUNTING PROCESS
10:00AM 3 OCCUR.

10:00AM 4 THE OTHER IS AN ANTIBODY TEST WHICH MEASURES WHETHER OR
10:00AM 5 NOT SOMEBODY HAD BEEN EXPOSED TO HCV, AND THAT WOULD BE WHAT WE
10:00AM 6 CALL AN ANTIBODY TEST.

10:00AM 7 EDISONS ONLY RAN ANTIBODY TESTS. THIS PRECISELY DESCRIBES
10:00AM 8 GENOTYPE AND LOAD IF YOU LOOK FURTHER DOWN ON THE EMAIL.

10:00AM 9 SO, NO, IT DOES NOT REFER TO EDISONS.

10:00AM 10 Q. AND YOU SEE MR. BALWANI'S EMAIL TO YOU, HE VIEWED THE
10:00AM 11 TECHNOLOGY THAT YOU WERE DESCRIBING AND WORKING ON AT THERANOS
10:00AM 12 AS THERANOS TRADE SECRET; CORRECT?

10:00AM 13 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.
10:01AM 14 LACKS FOUNDATION.

10:01AM 15 THE COURT: YOU'RE ASKING JUST WHAT THIS SAYS?

10:01AM 16 MR. CAZARES: YES.

10:01AM 17 THE WITNESS: CAN YOU REPEAT THE QUESTION, PLEASE?
10:01AM 18 BY MR. CAZARES:

10:01AM 19 Q. IN RESPONSE TO YOUR MESSAGE ON MAY 30, 2014, MR. BALWANI
10:01AM 20 WROTE TO YOU THAT "THIS HCV SMALL VOLUME PROJECT IS THERANOS
10:01AM 21 TRADE SECRET."

10:01AM 22 DO YOU SEE THAT?

10:01AM 23 A. I SEE THAT.

10:01AM 24 Q. SO WHATEVER THE PROJECT WAS YOU WERE WORKING ON,
10:01AM 25 MR. BALWANI VIEWED IT AS A THERANOS TRADE SECRET; CORRECT?

10:01AM 1 MR. BOSTIC: SAME OBJECTION.

10:01AM 2 THE COURT: SUSTAINED.

10:01AM 3 BY MR. CAZARES:

10:01AM 4 Q. YOU CAN SET THAT ASIDE.

10:01AM 5 DR. PANDORI, ON FRIDAY THERE WAS SOME DISCUSSION IN YOUR
10:01AM 6 DIRECT EXAM RELATING TO THE VIP DEMOS AND THE HANDLING OF
10:01AM 7 SAMPLES FROM DEMOS.

10:02AM 8 DO YOU RECALL THAT?

10:02AM 9 A. IT WAS FRIDAY? I RECALL THE CONVERSATION.

10:02AM 10 Q. AND YOU TESTIFIED RELATING TO THE HANDLING OF SAMPLES FROM
10:02AM 11 VIP DEMOS; CORRECT?

10:02AM 12 A. CORRECT.

10:02AM 13 Q. AND YOU TESTIFIED THAT MANAGEMENT, INCLUDING MR. BALWANI,
10:02AM 14 HAD INSTRUCTED THAT VIP SAMPLES WERE TO BE HANDLED QUICKLY;
10:02AM 15 CORRECT?

10:02AM 16 A. CORRECT.

10:02AM 17 Q. AND YOU TESTIFIED THAT THE PRACTICE RAISED SPIRITUAL
10:02AM 18 PROBLEMS FOR YOU BECAUSE TO EFFECT THAT, THE VIP SAMPLES WERE
10:02AM 19 KIND OF DROPPED TO THE FRONT OF THE LINE IN FRONT OF OTHER
10:02AM 20 PATIENT SAMPLES; CORRECT?

10:02AM 21 A. YES.

10:02AM 22 Q. IF YOU COULD TAKE A LOOK AT EXHIBIT 20255. 20555. I'M
10:02AM 23 SORRY, 20255. 20255. THAT'S IN VOLUME 1, THE ORIGINAL LARGE
10:02AM 24 VOLUME BINDER.

10:03AM 25 A. OKAY. I'VE FOUND IT.

10:03AM 1 Q. 20255 APPEARS TO BE A MESSAGE FROM MR. BALWANI TO YOURSELF
10:03AM 2 AND TWO OTHER INDIVIDUALS?
10:03AM 3 A. YES.
10:03AM 4 Q. AND THOSE INDIVIDUALS ARE KIND OF THE PRODUCT MANAGERS, IF
10:03AM 5 YOU WILL, AT THERANOS; CORRECT?
10:03AM 6 A. YES.
10:03AM 7 Q. AND THAT'S JANUARY 30, 2014?
10:03AM 8 A. IT IS JANUARY 30TH, 2014.
10:03AM 9 Q. AND THE SUBJECT LINE OF THE MESSAGE SAYS VIP SAMPLES.
10:03AM 10 DO YOU SEE THAT?
10:03AM 11 A. YES.
10:03AM 12 Q. AND THIS APPEARS TO BE RELATING TO THIS HANDLING OF
10:03AM 13 SAMPLES FROM VIP DEMOS THAT YOU DISCUSSED IN YOUR TESTIMONY;
10:03AM 14 CORRECT?
10:03AM 15 A. IT'S REFERRING TO VIP SAMPLES, CORRECT.
10:03AM 16 Q. OKAY.
10:03AM 17 YOUR HONOR, MOVE TO ADMIT 20255 SUBJECT TO THE PARTIES'
10:03AM 18 EMAIL STIPULATION.
10:03AM 19 MR. BOSTIC: NO OBJECTION.
10:03AM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
10:04AM 21 (DEFENDANT'S EXHIBIT 20255 WAS RECEIVED IN EVIDENCE.)
10:04AM 22 BY MR. CAZARES:
10:04AM 23 Q. AS YOU CAN SEE UP ON THE SCREEN, DR. PANDORI, THE MESSAGE
10:04AM 24 IS FROM MR. BALWANI TO YOURSELF, MAX FOSQUE, AND
10:04AM 25 NICHOLAS MENCHEL.

10:04AM 1 DO YOU SEE THAT?

10:04AM 2 A. I DO.

10:04AM 3 Q. AND SUBJECT LINE IS VIP SAMPLES.

10:04AM 4 DO YOU SEE THAT?

10:04AM 5 A. YES.

10:04AM 6 Q. AND IN THE MESSAGE TO YOU, MR. BALWANI WROTE, "PLEASE KNOW
10:04AM 7 THAT THERE IS A VERY HIGH LIKELIHOOD THAT WE HAD MORE VIP'S
10:04AM 8 YESTERDAY AND TODAY AND ALL WEEKEND AND MONDAY THAT WILL VISIT
10:04AM 9 OUR WAG PSC'S."

10:04AM 10 DO YOU SEE THAT?

10:04AM 11 A. YES.

10:04AM 12 Q. AND WAG PSC'S, THOSE ARE THE PATIENT SERVICE CENTERS WHERE
10:04AM 13 SAMPLES WERE COLLECTED; CORRECT?

10:04AM 14 A. I THINK SO.

10:04AM 15 Q. AND THEN THOSE SAMPLES WOULD BE TRANSPORTED OR SHIPPED TO
10:04AM 16 THE LAB IF NECESSARY; CORRECT?

10:04AM 17 A. CORRECT.

10:04AM 18 Q. AND MR. BALWANI WROTE IN THE MESSAGE TO YOURSELF, "THOUGH
10:04AM 19 ALL SAMPLES SHD RECEIVE SAME TREATMENT, GIVEN INCIDENTS OVER
10:05AM 20 LAST 2 DAYS, I WOULD LIKE EVERYONE PAYING SPECIAL ATTENTION FOR
10:05AM 21 NEXT WEEK UNTIL OUR PROCESS IS PERFECT."

10:05AM 22 DO YOU SEE THAT?

10:05AM 23 A. YES.

10:05AM 24 Q. SO MR. BALWANI IS TELLING YOU TO TREAT THE VIP SAMPLES THE
10:05AM 25 SAME AS OTHER SAMPLES; CORRECT?

10:05AM 1 A. CORRECT.

10:05AM 2 Q. BUT HE'S NOT ASKING FOR PREFERENTIAL TREATMENT IN THIS

10:05AM 3 MESSAGE FOR THE VIP'S; CORRECT?

10:05AM 4 A. WELL, HE'S SAYING THAT ALL OF THE VIP SAMPLES SHOULD

10:05AM 5 RECEIVE THE SAME TREATMENT, SO THAT ALL OF THE -- WHAT IT SAYS

10:05AM 6 IS THAT ALL OF THE VIP SAMPLES, ASSUMING SHD MEANS SHOULD, ALL

10:05AM 7 SAMPLES SHOULD RECEIVE THE SAME TREATMENT.

10:05AM 8 Q. THE WALGREENS PATIENT SERVICE CENTERS ARE WHERE ALL

10:05AM 9 PATIENT SAMPLES WERE COLLECTED; CORRECT?

10:05AM 10 A. YES.

10:05AM 11 Q. YOU CAN SET THAT ASIDE.

10:06AM 12 IN YOUR TESTIMONY IN RESPONSE TO QUESTIONS FROM THE

10:06AM 13 GOVERNMENT, YOU DISCUSSED AND MENTIONED THE FACT THAT YOU WERE

10:06AM 14 ASKED TO REVIEW VALIDATION REPORTS FOR OTHER TESTING DONE IN

10:06AM 15 THE RESEARCH AND DEVELOPMENT PORTION OF THERANOS; CORRECT?

10:06AM 16 A. CORRECT.

10:06AM 17 Q. AND THAT RELATED TO THIS NUCLEIC ACID AMPLIFICATION

10:06AM 18 DEVELOPMENT; CORRECT?

10:06AM 19 A. CORRECT.

10:06AM 20 Q. AND AS A PART OF THAT YOU HAD REGULAR COMMUNICATIONS, OR

10:06AM 21 COMMUNICATIONS WITH DR. PRANAV PATEL WHO WAS THE HEAD OF THE

10:06AM 22 NUCLEIC ACID AMPLIFICATION TEAM?

10:06AM 23 A. I DID.

10:06AM 24 Q. AND AS A PART OF THOSE DISCUSSION, DR. PATEL SHARED WITH

10:06AM 25 YOU VALIDATION REPORTS, OR DRAFT VALIDATION REPORTS; CORRECT?

10:06AM 1 A. CORRECT.

10:06AM 2 Q. AND IN ADDITION TO DR. PATEL, THERE WERE OTHER TEAMS AT

10:06AM 3 THERANOS DEVELOPING NEW TESTS; CORRECT?

10:06AM 4 A. I BELIEVE SO.

10:06AM 5 Q. YOU'RE FAMILIAR WITH AN INDIVIDUAL NAMED DR. PAUL PATEL?

10:06AM 6 A. YES.

10:06AM 7 Q. AND DR. PAUL PATEL, AGAIN, HEADED ANOTHER ONE OF THESE

10:07AM 8 TEAMS DEVELOPING TESTS WITHIN THE RESEARCH AND DEVELOPMENT

10:07AM 9 PORTION OF THE COMPANY; CORRECT?

10:07AM 10 A. MY RECOLLECTION IS THAT PAUL PATEL WORKED IN A SECTION

10:07AM 11 CALLED CHEMISTRY. I DON'T KNOW IF HE WAS DEVELOPING NEW TESTS

10:07AM 12 OR MANAGING EXISTING ONES.

10:07AM 13 Q. GENERAL CHEMISTRY WAS HIS DEPARTMENT; CORRECT?

10:07AM 14 A. I JUST CALLED IT CHEMISTRY.

10:07AM 15 Q. AND YOU'RE FAMILIAR WITH ANOTHER INDIVIDUAL NAMED

10:07AM 16 DR. CHINMAY PANGARKAR AS WELL; CORRECT?

10:07AM 17 A. I RECOGNIZE THE FIRST NAME.

10:07AM 18 Q. AND THERE WAS A TEAM AT THERANOS DEVELOPING ASSAYS

10:07AM 19 RELATING TO CYTOMETRY TESTING; CORRECT?

10:07AM 20 A. CORRECT.

10:07AM 21 Q. AND YOU'RE FAMILIAR WITH DR. SHARADA SIVARAMAN; CORRECT?

10:07AM 22 A. NO.

10:07AM 23 Q. AND YOU'RE FAMILIAR WITH A TEAM IN THERANOS'S RESEARCH AND

10:07AM 24 DEVELOPMENT LAB THAT WERE DEVELOPING ADDITIONAL TESTS RELATING

10:07AM 25 TO THE IMMUNOASSAYS FOR THE EDISON AND OTHER DEVICES; CORRECT?

10:07AM 1 A. I HAD A SENSE THAT WAS GOING ON, BUT I CAN'T RECALL
10:07AM 2 ANYONE'S NAME THAT PARTICIPATED IN THAT.
10:07AM 3 Q. DR. PANDORI, IF YOU CAN TAKE A LOOK AT EXHIBIT 20461,
10:08AM 4 20461. THAT SHOULD BE IN VOLUME 2.
10:08AM 5 A. OKAY. I'M THERE.
10:08AM 6 Q. 20461 APPEARS TO BE AN EMAIL DATED DECEMBER 11TH, 2013.
10:08AM 7 DO YOU SEE THAT?
10:08AM 8 A. YES.
10:08AM 9 Q. FROM DR. PATEL, PRANAV PATEL?
10:08AM 10 A. YES.
10:08AM 11 Q. TO YOURSELF?
10:08AM 12 A. YES.
10:08AM 13 Q. WITH A SUBJECT MATTER TNAA LDT VALIDATION REPORT.
10:08AM 14 DO YOU SEE THAT?
10:08AM 15 A. YES.
10:08AM 16 Q. AND THEN THERE ARE SOME ATTACHMENTS TO THE DOCUMENT?
10:09AM 17 A. I'M LOOKING AT IT.
10:09AM 18 Q. OKAY. DRAFT VALIDATION REPORTS?
10:09AM 19 A. THAT'S WHAT THE TITLE IS, YES.
10:09AM 20 Q. AND YOU HAD COMMUNICATIONS WITH DR. PATEL RELATING TO YOUR
10:09AM 21 REVIEW OF DRAFT VALIDATION REPORTS; CORRECT?
10:09AM 22 A. CORRECT.
10:09AM 23 MR. CAZARES: MOVE TO ADMIT 20461.
10:09AM 24 MR. BOSTIC: 401.
10:09AM 25 THE COURT: YOU'RE ASKING THAT THE ENTIRETY OF THE

10:09AM 1 EXHIBIT COME IN?

10:09AM 2 MR. CAZARES: IT'S NOT MY INTENT TO REVIEW THE

10:09AM 3 ENTIRETY OF THE ATTACHMENTS, YOUR HONOR, BUT TO ASK A FEW

10:09AM 4 QUESTIONS.

10:09AM 5 THE COURT: BUT YOU WANT THE JURY TO RECEIVE THIS

10:10AM 6 STACK?

10:10AM 7 MR. CAZARES: YES, YOUR HONOR.

10:10AM 8 THE COURT: IT'S ADMITTED AND IT MAY BE PUBLISHED.

10:10AM 9 (DEFENDANT'S EXHIBIT 20461 WAS RECEIVED IN EVIDENCE.)

10:10AM 10 BY MR. CAZARES:

10:10AM 11 Q. REFERRING TO THE FIRST PAGE, IT'S EXHIBIT 20461, AND IT'S

10:10AM 12 AN EMAIL ON DECEMBER 11TH, 2013?

10:10AM 13 DO YOU SEE THAT?

10:10AM 14 A. I DO.

10:10AM 15 Q. AND AGAIN, THIS IS FROM DR. PATEL TO YOU?

10:10AM 16 A. YES.

10:10AM 17 Q. AND SUBJECT LINE IS TNAALDT VALIDATION REPORTS.

10:10AM 18 DO YOU SEE THAT?

10:10AM 19 A. I DO.

10:10AM 20 Q. AND TNAALDT, FOR THE JURY, MEANS THERANOS'S NUCLEIC ACID

10:10AM 21 AMPLIFICATION TEST; CORRECT?

10:10AM 22 A. I THINK SO.

10:10AM 23 Q. AND LDT REFERS TO LAB DEVELOPED TESTS, MEANING THERANOS'S

10:10AM 24 PROPRIETARY TESTING; CORRECT?

10:10AM 25 A. LDT IS A TERMINOLOGY MEANING LABORATORY DEVELOPED TESTS,

10:10AM 1 AND WHAT IT REFERS TO IS A SITUATION WHERE A LAB BUILDS THEIR
10:11AM 2 OWN LABORATORY TESTS BECAUSE OF A NEED EITHER BECAUSE THERE'S
10:11AM 3 NO FDA CLEARED OPTION OR THERE'S A VERY SPECIFIC REASON WHY
10:11AM 4 THEY CANNOT RUN A FDA CLEARED OPTION.

10:11AM 5 SO THE LAB DEVELOPS A TEST AND IT'S CALLED AN LDT.
10:11AM 6 BEFORE AN LDT CAN BE UTILIZED DIAGNOSTICALLY OR
10:11AM 7 MEDICALLY --

10:11AM 8 MR. CAZARES: YOUR HONOR, MOVE TO STRIKE. THERE'S
10:11AM 9 NO QUESTION PENDING AND I HAVEN'T ASKED ALL OF THIS
10:11AM 10 INFORMATION.

10:11AM 11 THE COURT: I'M NOT GOING TO STRIKE IT. BUT YOU CAN
10:11AM 12 ASK ANOTHER QUESTION NOW.

10:11AM 13 MR. CAZARES: UNDERSTOOD, YOUR HONOR.

10:11AM 14 Q. DR. PANDORI, IF YOU CAN TURN TO PAGE 3 OF THE EXHIBIT.

10:11AM 15 A. PAGE 3, YES.

10:11AM 16 Q. AND PAGE 3 APPEARS TO BE A DRAFT VALIDATION REPORT DATED
10:11AM 17 NOVEMBER 27, 2013.

10:11AM 18 DO YOU SEE THAT?

10:11AM 19 A. YES.

10:11AM 20 Q. AND THIS TEST IS TITLED BORDETELLA PARAPERTUSSIS TNAA
10:11AM 21 VALIDATION REPORT.

10:11AM 22 DO YOU SEE THAT?

10:11AM 23 A. YES.

10:11AM 24 Q. AND THIS IS AMONG THE DRAFT VALIDATION REPORTS THAT YOU
10:12AM 25 REVIEWED DURING YOUR TIME AT THERANOS?

10:12AM 1 A. TO BE FRANK, I DON'T RECALL THIS ONE IN PARTICULAR, BUT
10:12AM 2 THERE WERE A FEW OF THEM, IF NOT MANY.

10:12AM 3 Q. SO YOU DO RECALL DRAFTING VALIDATION REPORTS, YOU'RE NOT
10:12AM 4 JUST SURE IF THIS WAS ONE OF THEM?

10:12AM 5 A. NO, I DIDN'T DRAFT THEM. I REVIEWED THOSE THAT WERE
10:12AM 6 DRAFTED BY OTHERS.

10:12AM 7 Q. AND YOU PROVIDED COMMENTS TO THE DRAFTERS?

10:12AM 8 A. YES.

10:12AM 9 Q. AND YOU VIEWED THE DRAFT VALIDATION REPORTS POSITIVELY;
10:12AM 10 CORRECT?

10:12AM 11 A. I DON'T RECALL THE INDIVIDUAL REVIEW OF EVERY REPORT.

10:12AM 12 Q. BUT YOU HAD POSITIVE THOUGHTS ABOUT MANY OF THEM; CORRECT?

10:12AM 13 A. I RECALL THAT THERE WERE -- THAT IT LOOKED LIKE IT WAS ON
10:12AM 14 THE RIGHT TRACK AND IT WAS AN EXCITING LINE OF POSSIBLE
10:12AM 15 TECHNOLOGY.

10:12AM 16 Q. AND THIS WAS POSSIBLE USE OF THERANOS'S TECHNOLOGY IN THE
10:12AM 17 FUTURE; CORRECT?

10:12AM 18 A. CORRECT, IT WAS POSSIBLE.

10:12AM 19 Q. IT WASN'T BEING USED IN THE CLINICAL LAB AT THE TIME?

10:12AM 20 A. CORRECT.

10:12AM 21 Q. YOU CAN SET THAT ASIDE.

10:12AM 22 IF YOU COULD TAKE A LOOK AT 20444. IT SHOULD ALSO BE IN
10:13AM 23 THAT SMALLER BINDER AGAIN.

10:13AM 24 A. I'M SORRY. WHAT WAS THE NUMBER AGAIN?

10:13AM 25 Q. 20444.

10:13AM 1 A. OH, YEAH, IT'S IN VOLUME 2.

10:13AM 2 ALL RIGHT. I'M THERE.

10:13AM 3 Q. 20444 APPEARS TO BE AN EMAIL DATED 12/13/2013.

10:13AM 4 DO YOU SEE THAT?

10:13AM 5 A. YES.

10:13AM 6 Q. FROM YOURSELF TO DR. PATEL?

10:13AM 7 A. YES.

10:13AM 8 Q. AND THE SUBJECT LINE SAYS NAAT VALIDATION.

10:13AM 9 DO YOU SEE THAT?

10:13AM 10 A. YES.

10:13AM 11 MR. CAZARES: YOUR HONOR, MOVE TO ADMIT 20444

10:13AM 12 PURSUANT TO THE PARTIES' STIPULATIONS REGARDING EMAILS.

10:14AM 13 MR. BOSTIC: NO OBJECTION.

10:14AM 14 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:14AM 15 (DEFENDANT'S EXHIBIT 20444 WAS RECEIVED IN EVIDENCE.)

10:14AM 16 BY MR. CAZARES:

10:14AM 17 Q. AGAIN TO ORIENT THE JURY, WE'RE LOOKING AT A

10:14AM 18 DECEMBER 13TH, 2013, EMAIL FROM YOURSELF TO DR. PATEL?

10:14AM 19 A. IT IS.

10:14AM 20 Q. AND THIS IS RELATING TO NAAT VALIDATIONS.

10:14AM 21 DO YOU SEE THAT?

10:14AM 22 A. YES.

10:14AM 23 Q. AND THAT'S THIS NUCLEIC ACID AMPLIFICATION VALIDATION

10:14AM 24 TESTS; CORRECT?

10:14AM 25 A. VERY LIKELY.

10:14AM 1 Q. AND CONTINUING WITH THE MESSAGE YOU START TO DR. PATEL,
10:14AM 2 "PRANAV, ADAM," BECAUSE DR. ROSENDORFF IS ALSO COPIED ON THE
10:14AM 3 MESSAGE, "I BELIEVE THAT WITH REGARD TO THE IDEA OF USING A
10:14AM 4 COMPARATOR METHOD, ONLY CERTAIN TESTS WILL REQUIRE THIS."

10:14AM 5 DO YOU SEE THAT?

10:14AM 6 A. YES.

10:14AM 7 Q. "FOR MANY OF THE ANALYTES, WE CAN ARGUE VERY WELL THAT
10:14AM 8 THERE IS NO FDA APPROVED MOLECULAR COMPARATOR METHOD."

10:14AM 9 DO YOU SEE THAT?

10:14AM 10 A. YES.

10:14AM 11 Q. AND THAT'S WHAT YOU WROTE?

10:15AM 12 A. CORRECT.

10:15AM 13 Q. AND THEN YOU FOLLOW, "AN INSPECTOR COULD ARGUE THAT WE
10:15AM 14 COULD HAVE USED CULTURE AS THE GOLD STANDARD. HOWEVER, I
10:15AM 15 BELIEVE THAT STRONG ARGUMENTS COULD BE MADE THAT WHAT YOU DID
10:15AM 16 WITH PCR WAS A BETTER COMPARATOR FOR THE TEST, SINCE IT IS WELL
10:15AM 17 ESTABLISHED THAT PCR IS MORE SENSITIVE THAN CULTURE FOR THE
10:15AM 18 VAST MAJORITY OF CASES."

10:15AM 19 CORRECT?

10:15AM 20 A. CORRECT.

10:15AM 21 Q. SO ESSENTIALLY IN THIS MESSAGE YOU'RE PROVIDING COMMENTS
10:15AM 22 TO DR. PATEL RELATING TO THESE TNAA VALIDATION REPORTS;
10:15AM 23 CORRECT?

10:15AM 24 A. CORRECT.

10:15AM 25 Q. AND SO BY THIS TIME YOU HAD ALREADY REVIEWED AT LEAST SOME

10:15AM 1 REPORTS; CORRECT?

10:15AM 2 A. CORRECT.

10:15AM 3 Q. IF WE CAN TURN TO THE SECOND PAGE, ITEM NUMBER 8, IT

10:15AM 4 APPEARS THAT YOU WROTE, "IN TWO OCCASIONS, AT LEAST, WHERE I

10:15AM 5 HAVE BEEN INSPECTED BY CLIA AND VALIDATIONS WERE REVIEWED, THE

10:15AM 6 INSPECTORS ASKED US TO HAVE A CONCLUDING STATEMENT THAT

10:16AM 7 INDICATED THAT THE LABORATORY HAS DETERMINED THAT BASED UPON

10:16AM 8 THE DATA, THAT THE TEST IS SAFE AND EFFECTIVE FOR USE WITH

10:16AM 9 HUMAN BEINGS/PATIENTS."

10:16AM 10 DO YOU SEE THAT?

10:16AM 11 A. I DO SEE IT.

10:16AM 12 Q. AND THEN YOU CONTINUED, "THESE VALIDATIONS ARE EXCELLENT,

10:16AM 13 BUT THEY ARE MISSING THIS ELEMENT."

10:16AM 14 THOSE ARE YOUR WORDS; CORRECT?

10:16AM 15 A. CORRECT.

10:16AM 16 Q. AND YOU DESCRIBED THE REPORTS AS EXCELLENT BUT MISSING

10:16AM 17 THIS PIECE; CORRECT?

10:16AM 18 A. CORRECT.

10:16AM 19 Q. AND "THE INTRO SHOULD STATE THAT THE GOAL WAS TO DETERMINE

10:16AM 20 IF THE TEST WAS SAFE FOR USE ON PEOPLE, AND THE CONCLUSION

10:16AM 21 SHOULD STATE THAT THE TEST IS SAFE FOR PEOPLE."

10:16AM 22 THOSE ARE YOUR WORDS?

10:16AM 23 A. YES, THOSE ARE MY WORDS.

10:16AM 24 Q. AND THAT'S AFTER REVIEWING THERANOS'S DRAFT VALIDATION

10:16AM 25 REPORTS FOR SOME OF THESE TNAA ASSAYS; CORRECT?

10:16AM 1 A. CORRECT.

10:16AM 2 Q. YOU CAN SET THAT ASIDE.

10:17AM 3 AND IF YOU CAN TAKE A LOOK AT 20460.

10:17AM 4 A. OKAY, I'M THERE.

10:17AM 5 Q. 20460 AT THE TOP OF THE PAGE, THE LATTER OF THE MESSAGES

10:17AM 6 IN THE CHAIN APPEARS TO BE DATED DECEMBER 14TH, 2013.

10:17AM 7 DO YOU SEE THAT?

10:17AM 8 A. YES.

10:17AM 9 Q. AND FROM DR. PATEL TO YOURSELF?

10:17AM 10 A. YES.

10:17AM 11 Q. WITH A COPY TO DANIEL YOUNG?

10:17AM 12 A. I SEE IT.

10:17AM 13 Q. AND THE SUBJECT LINE SAYS, RE B. PARAPERTUSSI VALID.SUGG?

10:17AM 14 A. I SEE IT.

10:17AM 15 Q. AND THEN THIS APPEARS TO BE AN EMAIL CHAIN BACK AND FORTH

10:17AM 16 RESPONSES BETWEEN YOURSELF AND DR. PATEL.

10:17AM 17 DO YOU SEE THAT?

10:17AM 18 A. YES.

10:17AM 19 Q. AND THIS RELATES AGAIN TO YOUR REVIEW OF THESE VALIDATION

10:17AM 20 REPORTS RELATING TO THERANOS'S NUCLEIC ACID AMPLIFICATION

10:18AM 21 TESTS; CORRECT?

10:18AM 22 A. THEY'RE REFERRING TO ONE SPECIFIC ASSAY, NOT ALL TNAA.

10:18AM 23 MR. CAZARES: MOVE TO ADMIT 20460, YOUR HONOR.

10:18AM 24 MR. BOSTIC: NO OBJECTION.

10:18AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:18AM 1 (DEFENDANT'S EXHIBIT 20460 WAS RECEIVED IN EVIDENCE.)

10:18AM 2 BY MR. CAZARES:

10:18AM 3 Q. AND FOCUSING OUR ATTENTION TO BE PAGE 2 OF THE EXHIBIT.

10:18AM 4 ON PAGE 2 AT THE TOP, THERE APPEARS TO BE A MESSAGE FROM

10:18AM 5 YOURSELF TO DR. PATEL COPIED TO DR. YOUNG.

10:18AM 6 DO YOU SEE THAT?

10:18AM 7 A. I DO.

10:18AM 8 Q. DECEMBER 14TH, 2013.

10:18AM 9 DO YOU SEE THAT?

10:18AM 10 A. OH, YEAH, IT WAS RIGHT AFTER I STARTED.

10:18AM 11 Q. IN YOUR MESSAGE YOU WROTE, "PRANAV,

10:18AM 12 "I'VE GONE THROUGH WHAT YOU SENT ME BACK. I WILL GO

10:18AM 13 THROUGH EVERY VALIDATION IN DETAIL, LIKE THIS, IF THE COMPANY

10:18AM 14 DEEMS THIS TO BE OF USE. I REALLY THINK THESE ARE SOLID."

10:18AM 15 THOSE ARE YOUR WORDS; CORRECT?

10:18AM 16 A. YES.

10:18AM 17 Q. "BUT WITH SOME TWEAKING, THEY WOULD BECOME WELL REFERENCED

10:19AM 18 DOCUMENTS, AIR-TIGHT AGAINST INSPECTION."

10:19AM 19 THOSE ARE YOUR WORDS; CORRECT?

10:19AM 20 A. CORRECT.

10:19AM 21 Q. "ALSO, I'D LOVE TO LEARN THE TNAA, AND EVEN RUN IT AT SOME

10:19AM 22 POINT -- I WOULD LIKE TO HELP WITH THESE VALIDATIONS AT ALL

10:19AM 23 LEVELS."

10:19AM 24 THOSE ARE YOUR WORDS?

10:19AM 25 A. YES.

10:19AM 1 Q. AND YOU HAD REVIEWED AT LEAST SOME OF THE VALIDATION
10:19AM 2 REPORTS BY DECEMBER 2013; CORRECT?
10:19AM 3 A. I DON'T KNOW HOW MANY.
10:19AM 4 Q. BUT YOU DID REVIEW SOME?
10:19AM 5 A. I BELIEVE SO, YES.
10:19AM 6 Q. AND THAT'S WHAT IS REFLECTED IN THE MESSAGE; CORRECT?
10:19AM 7 A. CORRECT.
10:19AM 8 Q. IF YOU COULD TAKE A LOOK AT EXHIBIT 20456.
10:19AM 9 A. OKAY.
10:19AM 10 Q. 20456 APPEARS TO BE A MESSAGE FROM -- OR DATED JANUARY 11,
10:20AM 11 2014.
10:20AM 12 DO YOU SEE THAT?
10:20AM 13 A. YES.
10:20AM 14 Q. FROM YOURSELF TO MR. BALWANI?
10:20AM 15 A. YES.
10:20AM 16 Q. THE SUBJECT LINE EDISONS, ET AL.
10:20AM 17 DO YOU SEE THAT?
10:20AM 18 A. YES.
10:20AM 19 Q. AND TAKE A LOOK AT THE MESSAGE AND SEE IF IT REFRESHES
10:20AM 20 YOUR RECOLLECTION ABOUT THE DISCUSSION.
10:20AM 21 A. YES, IT APPEARS TO BE A REVIEW OF THINGS THAT I HAD BEEN
10:20AM 22 DOING UP UNTIL JANUARY 11TH.
10:20AM 23 Q. AND IT WAS YOUR REGULAR PRACTICE TO COMMUNICATE WITH EMAIL
10:20AM 24 BOTH WITH MR. BALWANI AS WELL AS OTHERS AT THERANOS?
10:20AM 25 A. CORRECT.

10:20AM 1 Q. AND YOU DID YOUR BEST TO COMMUNICATE ACCURATELY THE ISSUES
10:20AM 2 AND EVENTS THAT YOU WERE DEALING WITH IN THE LAB?
10:20AM 3 A. YEAH, I WAS EAGER TO MAKE CLEAR THAT I WAS DOING MY JOB.
10:21AM 4 MR. CAZARES: OKAY. MOVE TO ADMIT 20456,
10:21AM 5 YOUR HONOR.
10:21AM 6 MR. BOSTIC: IS THIS COMING IN AS A BUSINESS RECORD?
10:21AM 7 THE COURT: I WOULD THINK THAT'S THE BASIS FOR THE
10:21AM 8 ADMISSION.
10:21AM 9 MR. CAZARES: YES, YOUR HONOR.
10:21AM 10 MR. BOSTIC: NO OBJECTION.
10:21AM 11 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.
10:21AM 12 (DEFENDANT'S EXHIBIT 20456 WAS RECEIVED IN EVIDENCE.)
10:21AM 13 BY MR. CAZARES:
10:21AM 14 Q. AND STARTING AT THE TOP OF THE MESSAGE, AGAIN, DATED
10:21AM 15 JANUARY 11TH, 2014, FROM YOURSELF TO MR. BALWANI.
10:21AM 16 DO YOU SEE THAT?
10:21AM 17 A. YES.
10:21AM 18 Q. AND THE SUBJECT LINE IS EDISONS ET AL.
10:21AM 19 A. YES.
10:21AM 20 Q. AND YOU WROTE, "SUNNY,
10:21AM 21 "I MET WITH SURAJ AND WE DISCUSSED THE 'GO LIVE' AND
10:21AM 22 VALIDATION ASSOCIATED TOPICS FOR THE EDISON IMMUNOASSAYS."
10:21AM 23 DO YOU SEE THAT?
10:21AM 24 A. YES.
10:21AM 25 Q. AND YOU WROTE, "I WILL WORK WITH HIM, IN MUCH THE SAME

10:21AM 1 CAPACITY AS I AM WORKING WITH PRANAV, TO GET THESE CLIA READY.

10:21AM 2 I HAVE TO SAY, THAT ONE OF THE THINGS I AM REALLY ENJOYING

10:21AM 3 ABOUT BEING HERE IS THE CALIBER OF INDIVIDUALS THAT ARE WORKING

10:21AM 4 HERE."

10:22AM 5 DO YOU SEE THAT?

10:22AM 6 A. YES.

10:22AM 7 Q. AND THOSE WERE YOUR THOUGHTS AT THE TIME; CORRECT?

10:22AM 8 A. CORRECT.

10:22AM 9 Q. "YOU TOLD ME A WHILE BACK, 'WE WILL NOT FAIL,' AND I HAVE

10:22AM 10 TO SAY, WITH PEOPLE LIKE THIS, I HAVE NO DOUBT."

10:22AM 11 THOSE WERE YOUR WORDS; CORRECT?

10:22AM 12 A. CORRECT.

10:22AM 13 Q. THE MESSAGE CONTINUES FURTHER DOWN NEAR THE BOTTOM. YOU

10:22AM 14 WROTE, "SOUNDS CORNY, BUT I ALREADY THINK WE'RE MAKING IN-ROADS

10:22AM 15 TOWARDS STAFF MORALE AND CULTURE IN CLIA; DON'T WANT TO

10:22AM 16 OVERPROMISE ANYTHING; BUT.. THIS IS AN EXCELLENT GROUP POISED

10:22AM 17 TO DO GREAT WORK, AND I'M LETTING THEM KNOW THIS."

10:22AM 18 CORRECT?

10:22AM 19 A. YES.

10:22AM 20 Q. AND THOSE ARE YOUR WORDS TO MR. BALWANI; CORRECT?

10:22AM 21 A. YES.

10:22AM 22 Q. YOU CAN SET THAT ASIDE.

10:23AM 23 THE COURT: FOLKS, WHY DON'T YOU TAKE A STANDING

10:23AM 24 BREAK HERE AND STRETCH FOR A MINUTE WHILE THE NEXT EXHIBIT IS

10:23AM 25 BEING SOUGHT.

10:23AM 1 (STRETCHING.)

10:23AM 2 THE COURT: THANK YOU.

10:23AM 3 COUNSEL.

10:23AM 4 MR. CAZARES: THANK YOU.

10:23AM 5 Q. DR. PANDORI, IF YOU CAN TAKE A LOOK AT EXHIBIT 20265.

10:23AM 6 20265.

10:23AM 7 A. I'M THERE.

10:23AM 8 Q. AND 20265 APPEARS TO BE AN EMAIL BETWEEN YOURSELF AND

10:24AM 9 MR. BALWANI.

10:24AM 10 DO YOU SEE THAT?

10:24AM 11 A. YES.

10:24AM 12 Q. DATED MARCH 17TH, 2014?

10:24AM 13 A. MARCH 18TH.

10:24AM 14 Q. 18TH. I APOLOGIZE. 2014? 2014?

10:24AM 15 A. OH, YES.

10:24AM 16 MR. CAZARES: YOUR HONOR, MOVE TO ADMIT PURSUANT TO

10:24AM 17 THE PARTIES' STIP REGARDING EMAILS.

10:24AM 18 MR. BOSTIC: NO OBJECTION.

10:24AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:24AM 20 (DEFENDANT'S EXHIBIT 20265 WAS RECEIVED IN EVIDENCE.)

10:24AM 21 BY MR. CAZARES:

10:24AM 22 Q. AND YOU CAN ALSO SEE THE MESSAGE UP ON TOP OF THE SCREEN,

10:24AM 23 DR. PANDORI, IF IT'S EASIER.

10:24AM 24 A. EITHER WAY.

10:24AM 25 Q. LOOKING AT THE TOP OF THE CHAIN, AGAIN, THE LATTER OF THE

10:24AM 1 MESSAGES APPEAR TO BE FROM MR. BALWANI TO YOURSELF COPYING
10:24AM 2 DANIEL YOUNG.
10:24AM 3 DO YOU SEE THAT?
10:24AM 4 A. YES.
10:24AM 5 Q. AND IT'S DATED MARCH 18TH, AS YOU SAID, 2014; CORRECT?
10:24AM 6 A. CORRECT.
10:24AM 7 Q. AND THE SUBJECT LINE SAYS RE: PA.
10:25AM 8 DO YOU SEE THAT?
10:25AM 9 A. YES.
10:25AM 10 Q. AND THEN IF WE SCROLL DOWN TO THE EARLIER OF THE MESSAGES
10:25AM 11 IN THE CHAIN --
10:25AM 12 A. HOW FAR DOWN WOULD YOU LIKE ME TO GO?
10:25AM 13 Q. START FROM THE BOTTOM.
10:25AM 14 THE FIRST MESSAGE IN THE CHAIN APPEARS TO BE FROM
10:25AM 15 MR. BALWANI TO YOURSELF MARCH 17TH, 2014; CORRECT?
10:25AM 16 A. YES.
10:25AM 17 Q. AND IN THE SUBJECT AGAIN IT'S PA.
10:25AM 18 AND MR. BALWANI ASKS YOU, "ARE YOU QUALIFIED TO BE LAB
10:25AM 19 DIRECTOR IN PENNSYLVANIA?"
10:25AM 20 DO YOU SEE THAT?
10:25AM 21 A. YES.
10:25AM 22 Q. AND THIS IS MARCH 17TH OF 2014. YOU RECEIVED -- YOU
10:25AM 23 TESTIFIED ON FRIDAY THAT THE "WIRED" ARTICLE THAT REFLECTED AN
10:25AM 24 INTERVIEW BY MS. HOLMES WAS A CATALYST UPON YOUR LEAVING
10:25AM 25 THERANOS; CORRECT?

10:25AM 1 A. CORRECT.

10:25AM 2 Q. BECAUSE OF REPRESENTATIONS IN THE ARTICLE.

10:26AM 3 THAT'S WHAT YOU TESTIFIED TO; CORRECT?

10:26AM 4 A. CORRECT.

10:26AM 5 Q. AND YOU RECEIVED THAT ARTICLE IN FEBRUARY OF 2014;

10:26AM 6 CORRECT?

10:26AM 7 A. YEAH.

10:26AM 8 I DON'T REMEMBER THE DATE EXACTLY.

10:26AM 9 Q. YOU RECEIVED THE ARTICLE BEFORE MR. BALWANI WAS RAISING

10:26AM 10 THE ISSUE TO YOU ON MARCH 17TH, 2014, ABOUT BECOMING A LAB

10:26AM 11 DIRECTOR IN PENNSYLVANIA FOR THERANOS; CORRECT?

10:26AM 12 A. WELL, I DON'T KNOW WHAT YOU MEAN BY "RECEIVED THE

10:26AM 13 ARTICLE."

10:26AM 14 Q. YOU RECEIVED THE ARTICLE IN FEBRUARY OF 2014; CORRECT?

10:26AM 15 MR. BOSTIC: ASKED AND ANSWERED.

10:26AM 16 THE COURT: SUSTAINED.

10:26AM 17 BY MR. CAZARES:

10:26AM 18 Q. LET'S CONTINUE WITH THE EXHIBIT.

10:26AM 19 YOU RESPONDED TO MR. BALWANI ON MARCH 17TH, 2014, "SUNNY,

10:26AM 20 "FROM WHAT I HAVE FOUND, YES, I AM QUALIFIED. THEY MAY

10:26AM 21 ASK ME TO TAKE AN EXAM, BUT ACCORDING TO THIS, I QUALIFY."

10:26AM 22 AND THEN IT LOOKS LIKE YOU REFERENCED A WEBSITE OF SOME

10:26AM 23 SORT; CORRECT?

10:26AM 24 A. CORRECT.

10:26AM 25 Q. AND YOU DIDN'T SAY TO MR. BALWANI, NO, I HAVE NO INTEREST

10:27AM 1 IN BEING A LAB DIRECTOR FOR THERANOS; CORRECT?

10:27AM 2 A. CORRECT.

10:27AM 3 Q. AND IF WE CONTINUE WITH THE EXHIBIT, MR. BALWANI RESPONDED
10:27AM 4 TO YOU, AGAIN MARCH 17TH, 2014, "OK. WE MAY NEED TO OPEN A LAB
10:27AM 5 THERE -- SIMILAR TO WHAT WE HAVE HERE AT 1601 (CLUNKERS AND
10:27AM 6 NORMANDY) OR INITIALLY ALL CLUNKERS AND THEN NORMANDY. FYI."

10:27AM 7 DO YOU SEE THAT?

10:27AM 8 A. YES.

10:27AM 9 Q. AND IN THAT WHEN MR. BALWANI IS REFERENCING CLUNKERS, HE'S
10:27AM 10 TALKING ABOUT FDA APPROVED DEVICES; CORRECT?

10:27AM 11 A. THAT'S MY MEMORY, YEAH.

10:27AM 12 Q. AND NORMANDY RELATES TO THE LDT FOR FINGERSTICK TESTING;
10:27AM 13 CORRECT?

10:27AM 14 A. CORRECT.

10:27AM 15 Q. AND THEN MR. BALWANI CONTINUES, "CAN YOU INVENTORY WHAT WE
10:27AM 16 NEED TO BUILD A CLUNKERS LAB AND WHAT PERCENTAGE VOLUME WILL IT
10:27AM 17 COVER."

10:27AM 18 DO YOU SEE THAT?

10:27AM 19 A. YES.

10:27AM 20 Q. AND SO HE'S ASKING YOU TO ADVISE MR. BALWANI WHAT WILL BE
10:28AM 21 NEEDED FOR A NEW LAB; CORRECT?

10:28AM 22 A. CORRECT.

10:28AM 23 Q. AND THEN CONTINUING WITH THE EXHIBIT, MARCH 18TH OF 2014,
10:28AM 24 IT LOOKS LIKE YOU RESPONDED TO MR. BALWANI'S REQUEST; CORRECT?

10:28AM 25 A. IT DOES, YES.

10:28AM 1 Q. AND YOU WROTE, "SUNNY,
10:28AM 2 "LET ME KNOW IF YOU WOULD LIKE MORE INFORMATION OR DETAIL.
10:28AM 3 HERE IS A SUMMARY."
10:28AM 4 AND THEN YOU REFERENCED EQUIPMENT THAT WOULD BE NEEDED FOR
10:28AM 5 A NEW LABORATORY; CORRECT?
10:28AM 6 A. CORRECT.
10:28AM 7 Q. AND WHEN MR. BALWANI ASKED YOU ABOUT BECOMING A NEW LAB
10:28AM 8 DIRECTOR IN PENNSYLVANIA, YOU DID NOT ASK HIM -- WELL, SCRATCH
10:28AM 9 THAT. SET THAT ASIDE. YOU CAN PUT THAT ASIDE.
10:29AM 10 IF YOU CAN TAKE A LOOK AT EXHIBIT 20458.
10:29AM 11 A. OKAY.
10:29AM 12 Q. NOW, AS YOU SIT HERE TODAY, YOU DON'T RECALL WHAT DAY YOU
10:29AM 13 RECEIVED A COPY OF THE "WIRED" ARTICLE THAT YOU SAY LED TO YOUR
10:29AM 14 RESIGNATION?
10:29AM 15 A. I DIDN'T REMEMBER THE EXACT DATE.
10:29AM 16 Q. OKAY. TAKE A LOOK AT EXHIBIT 20458. 20458.
10:29AM 17 ARE YOU LOOKING AT IT?
10:29AM 18 A. YES.
10:29AM 19 Q. AND IT APPEARS TO BE AN EMAIL?
10:29AM 20 A. THERE IS A -- IT'S AN EMAIL, YES.
10:29AM 21 Q. THE LATER OF WHICH APPEARS TO BE FROM A SWAPNA JOSHI.
10:30AM 22 DO YOU SEE THAT?
10:30AM 23 A. YES.
10:30AM 24 Q. TO YOURSELF?
10:30AM 25 A. AND ADAM.

10:30AM 1 Q. AND DR. ROSENDORFF.

10:30AM 2 DATED 2/27/2014.

10:30AM 3 DO YOU SEE THAT?

10:30AM 4 A. YES.

10:30AM 5 Q. AND THERE'S A REFERENCE TO "WIRED" ARTICLE.

10:30AM 6 DO YOU SEE THAT?

10:30AM 7 A. I DO.

10:30AM 8 Q. AND THEN BELOW THAT THERE'S A MESSAGE INVOLVING DR. YOUNG

10:30AM 9 AND OTHERS WITHIN THE COMP BIO LAB.

10:30AM 10 DO YOU SEE THAT?

10:30AM 11 A. OH, THE TO IS COMP.BIO.

10:30AM 12 Q. EXACTLY.

10:30AM 13 AND YOU KNOW WHO DR. YOUNG IS?

10:30AM 14 A. YES.

10:30AM 15 Q. AND SWAPNA JOSHI WORKED WITH DR. YOUNG; CORRECT?

10:30AM 16 A. I DON'T REMEMBER JOSHI SWAPNA.

10:30AM 17 Q. AND THE MESSAGE REFLECTS YOU RECEIVED THE "WIRED" ARTICLE

10:31AM 18 ON FEBRUARY 27, 2014; CORRECT?

10:31AM 19 A. THIS LINK WAS SENT TO ME ON THAT DAY.

10:31AM 20 Q. SO THAT WAS MORE THAN THREE MONTHS BEFORE YOU LEFT

10:31AM 21 THERANOS; CORRECT?

10:31AM 22 A. YES.

10:31AM 23 MR. CAZARES: MOVE TO ADMIT 20458, YOUR HONOR.

10:31AM 24 MR. BOSTIC: NO OBJECTION.

10:31AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:31AM 1 (DEFENDANT'S EXHIBIT 20458 WAS RECEIVED IN EVIDENCE.)

10:31AM 2 BY MR. CAZARES:

10:31AM 3 Q. AGAIN, TO ORIENT THE JURY, THE EARLIER OF THE TWO MESSAGES

10:31AM 4 IN THE CHAIN APPEARS TO BE FROM DR. YOUNG TO COMP.BIO.

10:31AM 5 DO YOU SEE THAT?

10:31AM 6 A. I DO.

10:31AM 7 Q. IS THAT A LIST SERVICE OF SOME SORT?

10:31AM 8 A. I DON'T KNOW WHAT THAT IS.

10:31AM 9 Q. AND THE DATE IS FEBRUARY 20TH, 2014.

10:31AM 10 DO YOU SEE THAT?

10:31AM 11 A. YES.

10:31AM 12 Q. AND THE SUBJECT LINE IS "WIRED" ARTICLE.

10:31AM 13 DO YOU SEE THAT?

10:31AM 14 A. YES.

10:31AM 15 Q. AND THEN THERE'S A LINK TO A "WIRED" ARTICLE THAT

10:31AM 16 REFERENCES ELIZABETH HOLMES AND THERANOS.

10:32AM 17 DO YOU SEE THAT?

10:32AM 18 A. YES.

10:32AM 19 Q. AND AGAIN, THE "WIRED" ARTICLE RELATING TO MS. HOLMES IS

10:32AM 20 WHAT YOU SAID WAS A CATALYST TO YOUR RESIGNATION FROM THERANOS;

10:32AM 21 CORRECT?

10:32AM 22 A. A BIG PART, YEP.

10:32AM 23 Q. AND THEN CONTINUING ON THE CHAIN, IT APPEARS THAT YOU

10:32AM 24 RECEIVED IT FROM MR. JOSHI, THE LINK TO THE ARTICLE, ON

10:32AM 25 FEBRUARY 27, 2014; CORRECT?

10:32AM 1 A. CORRECT.

10:32AM 2 Q. AND THIS IS ALSO BEFORE MR. BALWANI ASKED YOU ABOUT

10:32AM 3 BECOMING A LAB DIRECTOR IN PENNSYLVANIA FOR THERANOS; CORRECT?

10:32AM 4 A. CORRECT.

10:32AM 5 Q. AND THIS IS ALSO BEFORE THE MAY 2014 TRANSITION REPORTS

10:32AM 6 THAT YOU SENT TO DR. ROSENDORFF AND MR. BALWANI WHERE YOU

10:32AM 7 ADVISED THAT THEY NEEDED TO DOUBLE THE NUMBER OF EDISONS IN THE

10:32AM 8 CLINICAL LAB; CORRECT?

10:32AM 9 A. IT WAS BEFORE THAT EMAIL, YEAH.

10:32AM 10 Q. YOU CAN SET THAT ASIDE.

10:33AM 11 YOU CAN TAKE A LOOK AT EXHIBIT 20253. 20253.

10:33AM 12 A. OKAY, I'M THERE.

10:33AM 13 Q. ARE YOU LOOKING AT 20253?

10:33AM 14 A. I HAVE 20253.

10:33AM 15 Q. OKAY. AND 20253 APPEARS TO BE AN EMAIL CHAIN DATED

10:34AM 16 MAY 12TH OF 2014.

10:34AM 17 DO YOU SEE THAT?

10:34AM 18 A. ARE YOU REFERRING TO 20253?

10:34AM 19 Q. YES.

10:34AM 20 A. NO, I DON'T MATCH THOSE DATES.

10:34AM 21 Q. YOU KNOW WHAT? SET THAT ONE ASIDE.

10:34AM 22 YOU WANT TO LOOK AT 20490.

10:34AM 23 A. 20490?

10:34AM 24 Q. YES.

10:35AM 25 A. DO YOU KNOW WHAT VOLUME THAT IS IN?

10:35AM 1 Q. 20490 WOULD BE IN THE SMALLER BINDER THAT SAYS YOUR NAME
10:35AM 2 ON THE FRONT.

10:35AM 3 A. OKAY. I'M THERE.

10:35AM 4 Q. 20490 APPEARS TO BE AN EMAIL CHAIN, THE LATTER OF WHICH AT
10:35AM 5 THE TOP OF THE FIRST PAGE LOOKS TO BE DATED 5/22/2014.

10:35AM 6 DO YOU SEE THAT?

10:35AM 7 A. YES.

10:35AM 8 Q. A MESSAGE FROM YOURSELF TO SANI HADZIAHETOVIC?

10:35AM 9 DO YOU SEE THAT?

10:35AM 10 A. I SEE IT.

10:35AM 11 Q. AND THE SUBJECT MATTER IS EDISONS.

10:35AM 12 DO YOU SEE THAT?

10:35AM 13 A. YES.

10:35AM 14 MR. CAZARES: YOUR HONOR, MOVE TO ADMIT PER THE
10:35AM 15 PARTIES' STIPULATION REGARDING EMAILS.

10:35AM 16 MR. BOSTIC: IF AS A BUSINESS RECORD, NO OBJECTION,
10:35AM 17 YOUR HONOR.

10:35AM 18 MR. CAZARES: THIS ONE IS PRIOR INCONSISTENT
10:35AM 19 STATEMENTS, IMPEACHMENT RELATING TO EDISONS.

10:36AM 20 THE COURT: WELL, I'LL ADMIT IT. IT'S ADMITTED
10:36AM 21 PURSUANT TO THE STIPULATION.

10:36AM 22 (DEFENDANT'S EXHIBIT 20490 WAS RECEIVED IN EVIDENCE.)

10:36AM 23 BY MR. CAZARES:

10:36AM 24 Q. AND WE CAN START AT THE TOP OF FIRST PAGE, DR. PANDORI,
10:36AM 25 AGAIN A MAY 22ND, 2014, MESSAGE FROM YOURSELF TO

10:36AM 1 SANI HADZIAHETOVIC.

10:36AM 2 A. YES.

10:36AM 3 Q. AND YOU WROTE, "OK SANI,

10:36AM 4 "THANK YOU FOR YOUR ATTENTION AND WORK TO GET THIS GOING.

10:36AM 5 LET ME KNOW HOW I CAN ASSIST."

10:36AM 6 DO YOU SEE THAT?

10:36AM 7 A. YES.

10:36AM 8 Q. AND THIS RELATES TO EDISONS IN SOME WAY?

10:36AM 9 A. THAT'S THE SUBJECT LINE.

10:36AM 10 Q. WHY DON'T WE GO BACK ON PAGE 4, MIDDLE OF THE PAGE, THERE

10:37AM 11 APPEARS TO BE A MESSAGE FROM YOURSELF, MAY 20, 2014.

10:37AM 12 DO YOU SEE THAT?

10:37AM 13 A. YES.

10:37AM 14 Q. AND THEN THE MESSAGE IS TO A CHINMAY PANGARKAR.

10:37AM 15 DO YOU SEE THAT?

10:37AM 16 A. YES.

10:37AM 17 Q. ADAM ROSENDORFF.

10:37AM 18 DO YOU SEE THAT?

10:37AM 19 A. YES.

10:37AM 20 Q. NISHIT DOSHI.

10:37AM 21 DO YOU SEE THAT?

10:37AM 22 A. YES.

10:37AM 23 Q. AURELIE SOUPPE?

10:37AM 24 A. YES.

10:37AM 25 Q. ROMINA RIENER?

10:37AM 1 A. YES.

10:37AM 2 Q. AS WELL AS HODA ALAMDAR; CORRECT?

10:37AM 3 A. YES.

10:37AM 4 Q. NOW, MS. SOUPPE, MS. RIENER, AND MS. ALAMDAR ALL WORKED

10:37AM 5 WITHIN THE CLINICAL LAB; CORRECT?

10:37AM 6 A. YES.

10:37AM 7 Q. BUT DR. PANGARKAR WAS NOT WITHIN THE CLINICAL LAB;

10:37AM 8 CORRECT?

10:37AM 9 A. HE DIDN'T WORK AS A LAB TECH OR A CLS. I BELIEVE HE

10:37AM 10 WORKED DEVELOPING CBC TESTS, BUT I'M NOT 100 PERCENT CLEAR ON

10:37AM 11 MY MEMORY ON THAT.

10:37AM 12 Q. AND GETTING BACK TO THE MESSAGE FROM YOURSELF, YOU WROTE,

10:37AM 13 "HI, CHINMAY, NISHIT."

10:37AM 14 DO YOU SEE THAT?

10:37AM 15 A. YES.

10:37AM 16 Q. AND YOU WROTE, "THERE REMAINS AN ISSUE IN NORMANDY WITH

10:37AM 17 THE NUMBER OF EDISON READERS AVAILABLE FOR PATIENT TESTING. WE

10:38AM 18 WILL SURELY NEED MORE READERS FOR THE FOLLOWING REASONS."

10:38AM 19 DO YOU SEE THAT?

10:38AM 20 A. YES.

10:38AM 21 Q. AND THOSE ARE YOUR WORDS; CORRECT?

10:38AM 22 A. YES, THE FROM LINE IS ME.

10:38AM 23 Q. AND THIS IS MAY 20, 2014. THIS IS THE DAY AFTER YOUR

10:38AM 24 BIRTHDAY IN 2014; CORRECT?

10:38AM 25 A. IT IS.

10:38AM 1 Q. WHICH MEANS THIS IS A DAY WITHIN A DAY OF THE CONVERSATION
10:38AM 2 THAT YOU SAY YOU HAD WITH MS. HOLMES AND MR. BALWANI THAT LED
10:38AM 3 TO YOUR RESIGNATION AROUND THE TIME OF YOUR BIRTHDAY, MAY 19TH,
10:38AM 4 2014; CORRECT?

10:38AM 5 A. WELL, AS I'VE SAID, I'M NOT -- I DON'T RECALL PRECISELY
10:38AM 6 THE DAY THAT I HAD THAT CONVERSATION.

10:38AM 7 Q. WE CAN CONTINUE BACK TO THE MESSAGE. UNDER ITEM 1 YOU
10:38AM 8 WROTE, "THE NUMBER OF EDISON TESTS IS ALREADY CHALLENGING THE
10:38AM 9 NUMBER WE HAVE."

10:38AM 10 DO YOU SEE THAT?

10:38AM 11 A. YES.

10:38AM 12 Q. AND THEN YOU FOLLOW, "A NEW WORKFLOW PROCESS WILL REQUIRE
10:38AM 13 ALL VACUTAINERS WITH EDISON-CAPABLE TESTS TO BE ALIQUOTED INTO
10:38AM 14 CTN AND TESTED ON EDISONS."

10:39AM 15 DO YOU SEE THAT?

10:39AM 16 A. YES.

10:39AM 17 Q. AND THE MESSAGE CONTINUES. "MORE STORES ARE OPENING THIS
10:39AM 18 WEEK (WE CANNOT ESTIMATE HOW MANY MORE SPECIMENS WILL BE COMING
10:39AM 19 IN AS A RESULT)."

10:39AM 20 DO YOU SEE THAT?

10:39AM 21 A. YES.

10:39AM 22 Q. NOW, IN THE MESSAGE, YOU WERE NOT TELLING DR. PANGARKAR TO
10:39AM 23 STOP USING EDISONS FOR PATIENT TESTING; CORRECT?

10:39AM 24 A. CORRECT.

10:39AM 25 Q. AND IN THE MESSAGE, MAY 20, 2014, YOU ARE NOT TELLING

10:39AM 1 DR. ROSENDORFF TO STOP USING EDISONS FOR PATIENT TESTING;
10:39AM 2 CORRECT?
10:39AM 3 A. CORRECT.
10:39AM 4 Q. YOU'RE NOT TELLING ANY OF THE PERSONS IN EXHIBIT 20490 TO
10:39AM 5 STOP USING EDISONS; CORRECT?
10:39AM 6 A. I DON'T HAVE THAT AUTHORITY, AND I DID NOT AT THAT TIME.
10:39AM 7 Q. AND YOU'RE NOT MAKING THAT RECOMMENDATION IN EXHIBIT 20490
10:39AM 8 EITHER, ARE YOU?
10:39AM 9 A. I'M NOT MAKING THAT RECOMMENDATION HERE.
10:39AM 10 Q. IF WE CAN CONTINUE TO PAGE 5 OF THE MESSAGE.
10:40AM 11 YOU QUOTE, "THERE ARE APPARENTLY 2 ADDITIONAL READERS FOR
10:40AM 12 TSH, HOWEVER THEY ARE NOT BEEN CHARACTERIZED PROPERLY FOR USE."
10:40AM 13 DO YOU SEE THAT?
10:40AM 14 A. YES.
10:40AM 15 Q. AND THEN YOU FOLLOWED, "FOR TSH ALONE, WE HAVE ABOUT 10
10:40AM 16 TEST-HOURS OF DEMAND, NOT COUNTING BOTH QC RUNS AND ANY RERUNS
10:40AM 17 THAT ARE NECESSARY.
10:40AM 18 DO YOU SEE THAT?
10:40AM 19 A. YES.
10:40AM 20 Q. "OF COURSE OTHER TESTS ARE DEMANDING THE ATTENTION OF THE
10:40AM 21 TECHNICIAN, SO THINGS ARE NOT RUNNING PERFECTLY END-TO-END AND
10:40AM 22 SO THE AMOUNT OF WORK IS PRETTY HIGH."
10:40AM 23 DO YOU SEE THAT?
10:40AM 24 A. CORRECT.
10:40AM 25 Q. AND AT THAT TIME PATIENT VOLUME WAS INCREASING AT THE

10:40AM 1 CLINICAL LAB; CORRECT?

10:40AM 2 A. YEAH. I DON'T SPECIFICALLY RECALL WHAT THE NUMBERS WERE
10:40AM 3 AT THAT POINT IN TIME.

10:40AM 4 Q. THE MESSAGE CONTINUES, "CLIA LAB AIMS TO BRING MORE PEOPLE
10:40AM 5 INTO THIS SECTION TO TRAIN."

10:40AM 6 DO YOU SEE THAT?

10:40AM 7 A. YES.

10:40AM 8 Q. "HOWEVER, IN ORDER TO BE EFFECTIVE, EXTRA PEOPLE WILL NEED
10:40AM 9 MORE READERS."

10:40AM 10 DO YOU SEE THAT?

10:40AM 11 A. YES.

10:40AM 12 Q. THOSE ARE YOUR WORDS; CORRECT?

10:41AM 13 A. CORRECT.

10:41AM 14 Q. FOR THE LAB TECHNICIANS TO BE MORE EFFECTIVE, THEY WILL
10:41AM 15 NEED MORE READERS?

10:41AM 16 A. CORRECT.

10:41AM 17 Q. AND BY READERS YOU MEAN MORE EDISONS; CORRECT?

10:41AM 18 A. CORRECT.

10:41AM 19 Q. AND THEN YOU WROTE, "I'D LIKE TO DISCUSS A PLAN TO DOUBLE
10:41AM 20 THE NUMBER OF READERS FOR THE THREE MAIN TESTS."

10:41AM 21 DO YOU SEE THAT?

10:41AM 22 A. CORRECT.

10:41AM 23 Q. THOSE ARE YOUR WORDS; CORRECT?

10:41AM 24 A. CORRECT.

10:41AM 25 Q. AND BY "THREE MAIN TESTS," THAT'S THREE MAIN TESTS RUN ON

10:41AM 1 EDISON FOR PATIENT TESTING; CORRECT?

10:41AM 2 A. CORRECT.

10:41AM 3 Q. AND "THIS WILL BE NECESSARY AS MORE STORES WILL BE OPENING

10:41AM 4 IN JUNE AND WE STILL DON'T KNOW THE IMPACT OF THE OPENINGS IN

10:41AM 5 MAY."

10:41AM 6 DO YOU SEE THAT?

10:41AM 7 A. CORRECT.

10:41AM 8 Q. SO YOU WERE EXPECTING PATIENT VOLUME TO GO UP AT THE TIME,

10:41AM 9 WHICH IS WHY YOU WERE ASKING FOR MORE EDISONS AT THE TIME;

10:41AM 10 CORRECT?

10:41AM 11 A. YEAH. THEY FAILED SO FREQUENTLY THAT WE NEEDED MORE OF

10:41AM 12 THEM.

10:41AM 13 Q. BUT YOU'RE NOT SAYING STOP USING THEM, ARE YOU?

10:41AM 14 A. NOT IN THIS EMAIL.

10:42AM 15 Q. YOU CAN SET THAT ASIDE.

10:42AM 16 IF YOU CAN TAKE A LOOK AT EXHIBIT 20521.

10:42AM 17 A. OKAY. I'M THERE.

10:42AM 18 Q. 20521 APPEARS TO BE A MESSAGE, A CHAIN OF EMAILS, THE

10:42AM 19 LATTER OF WHICH IS DATED MAY 22ND, 2014.

10:42AM 20 DO YOU SEE THAT?

10:42AM 21 A. I SEE THE EMAILS.

10:42AM 22 Q. AND THE MESSAGE AT THE TOP APPEARS TO BE FROM YOURSELF.

10:42AM 23 DO YOU SEE THAT?

10:42AM 24 A. YES.

10:42AM 25 Q. TO MAX FOSQUE.

10:42AM 1 DO YOU SEE THAT?

10:42AM 2 A. YES.

10:42AM 3 Q. AND THE SUBJECT IS RE 35050 AND 23321.

10:43AM 4 DO YOU SEE THAT?

10:43AM 5 A. YES.

10:43AM 6 Q. AND MR. FOSQUE WAS ONE OF THOSE PROJECT MANAGERS AT

10:43AM 7 THERANOS; CORRECT?

10:43AM 8 A. YES.

10:43AM 9 Q. AND HE'S SOMEONE THAT YOU HAD OCCASION TO DEAL WITH IN

10:43AM 10 YOUR BUSINESS AT THERANOS; CORRECT?

10:43AM 11 A. FREQUENT OCCASION.

10:43AM 12 MR. CAZARES: MOVE TO ADMIT 20521, YOUR HONOR.

10:43AM 13 MR. BOSTIC: NO OBJECTION.

10:43AM 14 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:43AM 15 (DEFENDANT'S EXHIBIT 20521 WAS RECEIVED IN EVIDENCE.)

10:43AM 16 BY MR. CAZARES:

10:43AM 17 Q. NOW, STARTING AT THE TOP OF THE MESSAGE, THE LATTER OF THE

10:43AM 18 MESSAGES IN THE CHAIN, YOU WROTE TO MR. FOSQUE, "NO PROBLEM.

10:43AM 19 "I WHOLEHEARTEDLY EXPECTED IT TO PLAY OUT EXACTLY AS IT

10:43AM 20 PLAYED OUT.

10:43AM 21 "THANKS, MAX."

10:43AM 22 DO YOU SEE THAT?

10:43AM 23 A. I SEE IT.

10:43AM 24 Q. AND THEN IN RESPONSE -- THAT IS A RESPONSE TO A MESSAGE

10:44AM 25 FROM MR. FOSQUE WHERE HE WROTE, "THANKS... SHOULD I NOT HAVE

10:44AM 1 SENT THAT EMAIL, PERHAPS?

10:44AM 2 "WE WOULD HAVE LOOKED VERY FOOLISH IN FRONT OF A LARGE
10:44AM 3 DOCTOR'S GROUP IF WE HAD CALLED ONE OF THOSE PATIENTS FOR A
10:44AM 4 SECOND REDRAW..."

10:44AM 5 DO YOU SEE THAT?

10:44AM 6 A. I SEE IT.

10:44AM 7 Q. AND THE MESSAGE BELOW THAT APPEARS TO BE DATED MAY 21,
10:44AM 8 2014.

10:44AM 9 DO YOU SEE THAT?

10:44AM 10 A. YES.

10:44AM 11 Q. FROM YOURSELF; CORRECT?

10:44AM 12 A. CORRECT.

10:44AM 13 Q. TO MR. BALWANI?

10:44AM 14 A. AMONG OTHERS.

10:44AM 15 Q. MAX FOSQUE, DR. ROSENDORFF IS ALSO IN THE TO LINE.

10:44AM 16 DO YOU SEE THAT?

10:44AM 17 A. I DO.

10:44AM 18 Q. DANIEL YOUNG?

10:44AM 19 A. YES.

10:44AM 20 Q. NISHIT DOSHI.

10:44AM 21 DO YOU SEE THAT?

10:44AM 22 A. YES.

10:44AM 23 Q. AND TINA LIN?

10:44AM 24 A. I SEE IT.

10:44AM 25 Q. AND THEN THERE ARE OTHERS COPIED IN THE CC LINE?

10:44AM 1

A. YES.

10:44AM 2

Q. AND IN THE MESSAGE YOU WROTE, "I HAD BEEN NOTIFIED OF THIS

10:45AM 3

SITUATION VERY RECENTLY, TODAY, THROUGH MARIA WHO IS TRYING TO

10:45AM 4

REVIEW AND RELEASE THESE."

10:45AM 5

DO YOU SEE THAT?

10:45AM 6

A. YES.

10:45AM 7

Q. AND BY "THESE" THAT'S RELATING TO PATIENT RESULTS;

10:45AM 8

CORRECT?

10:45AM 9

A. I GUESS SO. I MEAN, THAT WOULD MAKE SENSE IN THE CONTEXT

10:45AM 10

OF THE EMAIL, BUT I DON'T KNOW FOR SURE.

10:45AM 11

Q. AND THEN YOU CONTINUED IN THE MESSAGE, "THE SAMPLES ARE

10:45AM 12

BOTH LOCATED AND ARE SCHEDULED TO BE RUN ASAP."

10:45AM 13

DO YOU SEE THAT?

10:45AM 14

A. YES.

10:45AM 15

Q. AND THEN YOUR MESSAGE CONTINUES, "THE EDISON OPERATORS

10:45AM 16

FAILED TO ENTER THESE TWO SPECIMENS INTO THE WORKFLOW."

10:45AM 17

DO YOU SEE THAT?

10:45AM 18

A. YES.

10:45AM 19

Q. AND THEN YOU CONTINUED, "IN A PURSUIT OF WHY, IT SEEMS

10:45AM 20

THAT AT LEAST PART OF THE ISSUE WAS THAT THEY WERE NOT USING

10:45AM 21

THE PENDING LISTS NOW BEING GENERATED EACH DAY, AND INSTEAD

10:45AM 22

RELYING ON THE BINDER DOWNSTAIRS WITH THE SPECIMEN PRINTOUTS."

10:45AM 23

DO YOU SEE THAT?

10:45AM 24

A. YEAH.

10:45AM 25

Q. "TOMORROW THERE IS A CLIA WIDE MEETING TO DISCUSS THE

10:45AM 1 UTILIZATION OF THE NOVEL PENDING LISTS, AND TO REVIEW THIS
10:46AM 2 ISSUE."

10:46AM 3 DO YOU SEE THAT?

10:46AM 4 A. YES.

10:46AM 5 Q. SO YOU ARE REPORTING TO THE RECIPIENTS OF THE MESSAGE THAT
10:46AM 6 THE OPERATORS FAILED TO IDENTIFY TWO SPECIMENS AS NEEDING TO BE
10:46AM 7 RUN; CORRECT?

10:46AM 8 A. YES.

10:46AM 9 Q. AND THEN YOU WERE IDENTIFYING A WAY THAT YOU WERE GOING TO
10:46AM 10 SOLVE THAT PROBLEM IN THE FUTURE; CORRECT?

10:46AM 11 A. YES.

10:46AM 12 Q. AND THEN THE MESSAGE CONTINUES. YOU WROTE, "RELATEDLY, I
10:46AM 13 HAVE ON TWO OCCASIONS IN THE LAST 2 WEEKS REQUESTED MORE EDISON
10:46AM 14 READERS TO BE MADE AVAILABLE IN NORMANDY."

10:46AM 15 DO YOU SEE THAT?

10:46AM 16 A. YES.

10:46AM 17 Q. THOSE ARE YOUR WORDS; CORRECT?

10:46AM 18 A. CORRECT.

10:46AM 19 Q. "TESTING VOLUMES ARE GOING UP AND HAVING ONLY 2 TO 3
10:46AM 20 READERS PER TEST CAUSES SPECIMENS TO BACK UP AND FOR THE
10:46AM 21 WORKFLOW TO GAIN COMPLEXITY."

10:46AM 22 DO YOU SEE THAT?

10:46AM 23 A. OH, YEAH.

10:46AM 24 Q. AND THIS BACKUP ISSUE OR TURN-AROUND TIME, THAT WAS A
10:46AM 25 CONCERN YOU HAD AT THE TIME; CORRECT?

10:46AM 1 A. AMONG SEVERAL CONCERNS, YES.

10:47AM 2 Q. AND THEN YOU CONTINUED, "I AM TOLD THAT MORE READERS ARE

10:47AM 3 ON THEIR WAY, AT LEAST FOR THE MOST COMMON TESTS."

10:47AM 4 CORRECT?

10:47AM 5 A. CORRECT.

10:47AM 6 Q. AND IN THE MESSAGE, YOU'RE NOT TELLING THE RECIPIENTS OF

10:47AM 7 THIS MESSAGE TO STOP USING EDISONS FOR PATIENT TESTING;

10:47AM 8 CORRECT?

10:47AM 9 A. CORRECT.

10:47AM 10 Q. AND AMONG THE RECIPIENTS OF THIS MESSAGE IS MR. BALWANI;

10:47AM 11 CORRECT?

10:47AM 12 A. CORRECT.

10:47AM 13 MR. CAZARES: YOUR HONOR, MAY I HAVE A MOMENT?

10:47AM 14 THE COURT: YES.

10:48AM 15 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

10:48AM 16 MR. CAZARES: YOUR HONOR, NO FURTHER QUESTIONS AT

10:48AM 17 THIS TIME.

10:48AM 18 THE COURT: REDIRECT?

10:48AM 19 MR. BOSTIC: YES, YOUR HONOR.

10:48AM 20 YOUR HONOR, MAY I ASK WHEN THE COURT IS CONSIDERING TAKING

10:48AM 21 A MORNING BREAK?

10:48AM 22 THE COURT: WELL, MAYBE AT THE BOTTOM OF THE HOUR.

10:48AM 23 ANOTHER 40 MINUTES.

10:48AM 24 I DON'T SEE AN OBJECTION, SO LET'S DO THAT.

10:48AM 25 MR. BOSTIC: THANK YOU, YOUR HONOR. WE'LL PLAN

10:48AM 1 ACCORDINGLY.

10:48AM 2 **REDIRECT EXAMINATION**

10:48AM 3 BY MR. BOSTIC:

10:48AM 4 Q. GOOD MORNING, DR. PANDORI.

10:48AM 5 A. GOOD MORNING.

10:48AM 6 Q. I WOULD LIKE TO ASK YOU A FEW QUESTIONS FOLLOWING UP ON
10:48AM 7 YOUR CONVERSATION WITH MR. CAZARES OVER THE LAST COUPLE OF
10:48AM 8 DAYS.

10:49AM 9 FIRST I'D LIKE TO START ON THE TOPIC OF PROFICIENCY
10:49AM 10 TESTING AT THERANOS. DO YOU RECALL TALKING ABOUT THAT ON YOUR
10:49AM 11 DIRECT EXAM AND THEN ON CROSS?

10:49AM 12 A. YES, I DO.

10:49AM 13 Q. AND IN PARTICULAR, DO YOU RECALL DISCUSSIONS ABOUT A TEST
10:49AM 14 THAT WAS RUN AT THERANOS ON PROFICIENCY TESTING SAMPLES IN
10:49AM 15 FEBRUARY OF 2014?

10:49AM 16 A. YES.

10:49AM 17 Q. ON CROSS, MR. CAZARES ASKED YOU WHETHER YOU HAD PERSONALLY
10:49AM 18 OBSERVED THAT TESTING BEING PERFORMED.

10:49AM 19 DO YOU RECALL THAT QUESTIONING?

10:49AM 20 A. YES, I RECALL THAT.

10:49AM 21 Q. AND YOUR TESTIMONY WAS THAT YOU HAD NOT SEEN THAT TESTING
10:49AM 22 ACTUALLY HAPPEN; CORRECT?

10:49AM 23 A. CORRECT.

10:49AM 24 Q. DO YOU HAVE ANY REASON, SITTING HERE TODAY, TO DOUBT THAT
10:49AM 25 THAT TEST WAS PERFORMED PROPERLY?

10:49AM 1 MR. CAZARES: OBJECTION. CALLS FOR SPECULATION.

10:49AM 2 THE COURT: OVERRULED.

10:49AM 3 THE WITNESS: NO, I HAVE NO REASON TO BELIEVE THAT
10:50AM 4 IT WAS TESTED INCORRECTLY.

10:50AM 5 LABORATORIES OPERATE BY STANDARD OPERATING PROCEDURES THAT
10:50AM 6 ARE WRITTEN AND TRAINED AND COMPETENCY IS ASSESSED, AND THAT'S
10:50AM 7 UNLIKE OTHER STYLES OF WORKPLACES.

10:50AM 8 BY MR. BOSTIC:

10:50AM 9 Q. AND I'D LIKE TO ASK YOU, ON THAT SAME TOPIC, ABOUT
10:50AM 10 ERIKA CHEUNG SPECIFICALLY. ARE YOU FAMILIAR WITH MS. CHEUNG
10:50AM 11 AND HER POSITION AT THE COMPANY?

10:50AM 12 A. I AM.

10:50AM 13 Q. ARE YOU FAMILIAR WITH MS. CHEUNG'S ROLE IN THE CLINICAL
10:50AM 14 LAB AT THERANOS DURING YOUR TIME THERE?

10:50AM 15 A. I AM FAMILIAR.

10:50AM 16 Q. AS PART OF MS. CHEUNG'S ROLE AT THERANOS, DID SHE HAVE
10:50AM 17 EXPERIENCE WITH THE PROCEDURES FOR RUNNING PATIENT SAMPLES ON
10:50AM 18 EDISON DEVICES?

10:50AM 19 A. IT WAS MY UNDERSTANDING THAT SHE DID, YES.

10:50AM 20 Q. AND WHERE DID THAT EXPERIENCE COME FROM BASED ON YOUR
10:50AM 21 UNDERSTANDING?

10:50AM 22 A. THERANOS.

10:50AM 23 Q. AND WHAT WAS IT ABOUT HER ROLE THAT GAVE HER THAT
10:50AM 24 EXPERIENCE?

10:51AM 25 A. HER ROLE WAS AS A LABORATORY ASSOCIATE, AND THAT WAS THEIR

10:51AM 1 ROLE AND JOB DESCRIPTION.

10:51AM 2 Q. THERE WAS ALSO SOME DISCUSSION WITH MR. CAZARES ABOUT
10:51AM 3 WHERE THE TEST MATERIAL FOR THAT FEBRUARY TEST CAME FROM.

10:51AM 4 DO YOU RECALL THAT?

10:51AM 5 A. YES.

10:51AM 6 Q. AND MR. CAZARES ASKED YOU ABOUT THE FACT THAT THOSE
10:51AM 7 SAMPLES HAD BEEN PREVIOUSLY RECEIVED AND USED FOR A ROUND OF
10:51AM 8 TESTING; IS THAT CORRECT?

10:51AM 9 A. CORRECT.

10:51AM 10 Q. DOES THAT FACT GIVE YOU ANY REASON TO DOUBT THE VALIDITY
10:51AM 11 OF THE FEBRUARY 2014 TESTS THAT WE'VE DISCUSSED?

10:51AM 12 A. NOT AT THIS TIME.

10:51AM 13 Q. THE FACT THAT THOSE SAMPLES HAD BEEN USED IN A PREVIOUS
10:51AM 14 ROUND, DOES THAT DEGRADE OR ERASE THE ABILITY OF THOSE SAMPLES
10:51AM 15 TO BE USED FOR THIS KIND OF TESTING?

10:52AM 16 MR. CAZARES: OBJECTION. 702.

10:52AM 17 THE COURT: OVERRULED. OVERRULED.

10:52AM 18 YOU CAN ANSWER THE QUESTION.

10:52AM 19 THE WITNESS: I'M NOT FAMILIAR WITH FOR THOSE
10:52AM 20 PARTICULAR TESTS EXACTLY, BUT IT WOULD BE COMMON, FROM A
10:52AM 21 STABILITY POINT OF VIEW OR --

10:52AM 22 MR. CAZARES: OBJECTION. FOUNDATION.

10:52AM 23 THE COURT: SUSTAINED.

10:52AM 24 YOU CAN ASK ANOTHER QUESTION.

10:52AM 25 MR. BOSTIC: MAY I LAY A FOUNDATION, YOUR HONOR?

10:52AM 1 THE COURT: YES.

10:52AM 2 BY MR. BOSTIC:

10:52AM 3 Q. DR. PANDORI, FROM YOUR WORK AT THERANOS, DO YOU HAVE AN
10:52AM 4 UNDERSTANDING AS TO THE GENERAL STABILITY OF SAMPLES LIKE WE'RE
10:52AM 5 TALKING ABOUT?

10:52AM 6 A. FROM MY WORK AT THERANOS?

10:52AM 7 Q. YES.

10:52AM 8 A. I HAVE A GENERAL UNDERSTANDING OF THE STABILITY OF SUCH
10:52AM 9 SPECIMENS BASED ON THE ENTIRETY OF MY EXPERIENCE.

10:52AM 10 Q. LET ME ASK YOU A MORE GENERAL QUESTION THEN.

10:52AM 11 YOU TESTIFIED EARLIER THAT IT WAS YOUR DECISION TO RUN
10:53AM 12 EDISON TESTING ON THESE SAMPLES IN FEBRUARY OF 2014; IS THAT
10:53AM 13 CORRECT?

10:53AM 14 A. YES.

10:53AM 15 Q. AND WHEN YOU DIRECTED THAT THAT TESTING HAPPEN, WHAT WAS
10:53AM 16 YOUR VIEW AS TO WHETHER THAT TESTING WAS GOING TO PROVIDE VALID
10:53AM 17 OR INVALID DATA?

10:53AM 18 A. MY VIEW WAS THAT IT WOULD PROVIDE VALID DATA.

10:53AM 19 Q. AND SITTING HERE TODAY, DO YOU HAVE ANY REASON TO DOUBT
10:53AM 20 THAT THAT DATA WAS VALID?

10:53AM 21 A. I HAVE NONE.

10:53AM 22 Q. MS. WACHS, CAN WE DISPLAY EXHIBIT 1548, AND SPECIFICALLY
10:53AM 23 THE ATTACHMENT.

10:53AM 24 DR. PANDORI, WHEN YOU WERE DISCUSSING THIS SPECIFIC TEST,
10:53AM 25 OR THIS TESTING WITH MR. CAZARES, THERE WAS ALSO SOME

10:53AM 1 DISCUSSION ABOUT AAP.

10:53AM 2 DO YOU RECALL THAT?

10:53AM 3 A. YES.

10:53AM 4 Q. AND THAT DISCUSSION CONCERNED, FOR EXAMPLE, WHETHER

10:54AM 5 THERANOS HAD A PEER GROUP SUCH THAT IT COULD DO PROFICIENCY

10:54AM 6 TESTING IN THE STANDARD, IN THE INDUSTRY STANDARD WAY; CORRECT?

10:54AM 7 A. CORRECT.

10:54AM 8 Q. AND YOU TESTIFIED THAT YOU RECOGNIZED THAT THERANOS DID

10:54AM 9 NOT HAVE A PEER GROUP SUCH THAT IT COULD DO STANDARD

10:54AM 10 PROFICIENCY TESTING; CORRECT?

10:54AM 11 A. CORRECT.

10:54AM 12 Q. AND WAS THAT YOUR UNDERSTANDING IN FEBRUARY OF 2014?

10:54AM 13 A. NO.

10:54AM 14 Q. WHEN YOU ORDERED THAT THIS TESTING TAKE PLACE IN FEBRUARY

10:54AM 15 OF 2014, HOW DID YOU ACCOUNT FOR THE FACT THAT THIS WAS NOT AAP

10:54AM 16 BUT WAS STANDARD PROFICIENCY TESTING?

10:54AM 17 A. WELL, AT THIS MOMENT IN TIME I WASN'T AWARE OF AN AAP

10:54AM 18 PROTOCOL AT THERANOS.

10:54AM 19 MY PRIMARY DRIVE AND CONCERN IN THAT ACTIVITY WAS THAT WE

10:54AM 20 HAD NOT DONE PT PROPERLY, WHICH IS TO SAY THAT WE HAD NOT DONE

10:55AM 21 PROFICIENCY TESTING IN A MANNER CONSISTENT WITH HOW PATIENT

10:55AM 22 SPECIMENS ARE TREATED.

10:55AM 23 SO MY PRIMARY GOAL WAS TO -- THERE WERE TWO GOALS. ONE

10:55AM 24 WAS TO GET THAT DONE; AND SECONDARILY, TO THEN SEE FOR MYSELF,

10:55AM 25 BECAUSE I WAS RELATIVELY NEW AT THAT COMPANY, HOW THE

10:55AM 1 PERFORMANCE WOULD GO.

10:55AM 2 Q. IN RETROSPECT -- WELL, LET ME ASK A DIFFERENT QUESTION.

10:55AM 3 SUBSEQUENTLY DID YOU COME TO HAVE A BETTER UNDERSTANDING
10:55AM 4 OF AAP PROTOCOLS OR REQUIREMENTS AS IT RELATED TO THERANOS?

10:55AM 5 A. I DID.

10:55AM 6 Q. INCORPORATING THAT UNDERSTANDING IN RETROSPECT, DO YOU NOW
10:55AM 7 VIEW THE DATA THAT WE'RE LOOKING AT ON THE SCREEN AS INVALID OR
10:55AM 8 NOT USEFUL IN TERMS OF MEASURING THE PERFORMANCE OF THERANOS
10:55AM 9 TESTS?

10:55AM 10 A. WELL, I WAS NOT ABLE TO ASCERTAIN THE ANSWER TO THAT
10:55AM 11 QUESTION.

10:55AM 12 YOU KNOW, I WASN'T THERE LONG ENOUGH FOR ANYBODY TO SHOW
10:56AM 13 ME ANY DATA THAT INDICATED THAT THERE WAS A MATRIX ISSUE.
10:56AM 14 ALTHOUGH THE CONSTRUCTION OF AAP'S PRIOR TO MY ARRIVAL AT
10:56AM 15 THERANOS WOULD IMPLY THAT SUCH STUDIES HAD BEEN DONE, I WAS
10:56AM 16 NEVER MADE AWARE OF THE RESULTS OF SUCH STUDIES.

10:56AM 17 Q. LET ME ASK IT MAYBE A SIMPLER WAY.

10:56AM 18 WE REVIEWED THIS DATA DURING YOUR DIRECT EXAMINATION;
10:56AM 19 CORRECT?

10:56AM 20 A. CORRECT.

10:56AM 21 Q. AND THIS TEST IN FEBRUARY OF 2014, IN YOUR VIEW, DID IT
10:56AM 22 REVEAL ANY PROBLEMS OR RAISE ANY CONCERNS ABOUT THE ACCURACY OF
10:56AM 23 THERANOS'S TESTING?

10:56AM 24 MR. CAZARES: OBJECTION. 702.

10:56AM 25 THE COURT: OVERRULED.

10:56AM 1 THE WITNESS: YES, IT DID.

10:56AM 2 BY MR. BOSTIC:

10:56AM 3 Q. AND SUBSEQUENT TO THAT, DID YOUR ADDITIONAL DISCUSSIONS
10:56AM 4 ABOUT AAP, OR ANY OTHER TOPIC, REMOVE THOSE CONCERNS THAT THIS
10:56AM 5 DATA HAD RAISED ABOUT POSSIBLE INACCURACY WITH THERANOS TESTS?

10:56AM 6 A. NO, THEY HAD NOT ALL BY THEMSELVES REMOVED THAT.

10:57AM 7 Q. AND WHEN YOU LEFT THE COMPANY, DID YOU STILL HAVE CONCERNS
10:57AM 8 ABOUT THE ACCURACY OF THERANOS'S TESTING?

10:57AM 9 A. YES.

10:57AM 10 Q. LOOKING AT THIS DATA SPECIFICALLY, I'LL DRAW YOUR
10:57AM 11 ATTENTION TO THE PSA RESULTS IN COLUMNS D, E, F, AND G.

10:57AM 12 DO YOU SEE THAT DATA?

10:57AM 13 A. I DO.

10:57AM 14 Q. AND THERE WAS SOME DISCUSSION WITH MR. CAZARES ABOUT TWO
10:57AM 15 SAMPLES THAT WERE RERUN.

10:57AM 16 DO YOU RECALL THAT DISCUSSION?

10:57AM 17 A. I DO.

10:57AM 18 Q. AND MR. CAZARES SUGGESTED TO YOU THAT A RERUN MIGHT BE
10:57AM 19 NECESSARY IN CASES WHERE THERE WAS AN EQUIPMENT MALFUNCTION.

10:57AM 20 DO YOU RECALL THAT?

10:57AM 21 A. YES.

10:57AM 22 Q. DO YOU KNOW ONE WAY OR ANOTHER WHETHER THERE WAS AN
10:57AM 23 EQUIPMENT MALFUNCTION DURING THIS FEBRUARY 2014 TESTING?

10:57AM 24 A. I DO NOT KNOW ONE WAY OR THE OTHER.

10:57AM 25 Q. THE FACT THAT THOSE TWO SAMPLES WERE RERUN, DO THEY ALLOW

10:57AM 1 YOU TO DRAW ANY CONCLUSIONS OR REVEAL ANYTHING ABOUT THE

10:58AM 2 PRECISION OF THE TWO TESTING METHODS THAT ARE BEING USED?

10:58AM 3 A. YEAH. TAKEN AT FACE VALUE, THESE DATA DEMONSTRATED,

10:58AM 4 ALBEIT WITH TWO SAMPLES RUN, THAT THE PREDICATE METHOD HAD HIGH

10:58AM 5 PRECISION LIKELY, AND THAT THE THERANOS METHOD HAD LESS

10:58AM 6 PRECISION.

10:58AM 7 Q. AND WOULD TESTING PRECISION BE ONE POSSIBLE REASON WHY YOU

10:58AM 8 MIGHT WANT TO RERUN SAMPLES IN A TEST LIKE THIS?

10:58AM 9 A. WOULD PRECISION BE A REASON TO RERUN THEM?

10:58AM 10 Q. WOULD A DESIRE TO TEST PRECISION BE A REASON WHY YOU MIGHT

10:58AM 11 WANT TO RERUN SAMPLES IN A TEST LIKE THIS?

10:58AM 12 A. NOT IN A PROFICIENCY TEST.

10:58AM 13 BUT IN A VERIFICATION OR VALIDATION STUDY, YOU WOULD

10:58AM 14 REALLY WANT TO DEFINITELY RERUN SPECIMENS TO ASCERTAIN

10:58AM 15 PRECISION.

10:58AM 16 MR. CAZARES: OBJECTION. NONRESPONSIVE.

10:59AM 17 THE COURT: OVERRULED.

10:59AM 18 BY MR. BOSTIC:

10:59AM 19 Q. AND WAS THIS A FORMAL PROFICIENCY TEST?

10:59AM 20 A. WAS WHAT A FORMAL PROFICIENCY TEST?

10:59AM 21 Q. WHAT WE'RE LOOKING AT FROM FEBRUARY 2014.

10:59AM 22 A. THEY WERE RUN ON FORMAL PROFICIENCY TESTING SPECIMENS.

10:59AM 23 Q. BUT WHEN IT COMES TO -- AS FAR AS THE PROCEDURE AND THE

10:59AM 24 PROTOCOLS, WAS THIS A FORMAL PROFICIENCY TESTING PROCESS?

10:59AM 25 A. UM, I'M SORRY THAT I'M STUCK ON THE WORD "FORMAL." I

10:59AM 1 DON'T UNDERSTAND IT.

10:59AM 2 SOMEBODY NEEDED TO RUN PT REGULARLY AND ACCORDING TO

10:59AM 3 REGULATIONS, AND WE WERE TRYING TO ACHIEVE THAT. SO IF THAT

10:59AM 4 MEETS THE DEFINITION OF "FORMAL," THEN, YES, IT WAS FORMAL.

10:59AM 5 Q. UNDERSTOOD.

10:59AM 6 MS. WACHS, COULD WE CALL UP EXHIBIT 5545. THIS WAS

10:59AM 7 PREVIOUSLY ADMITTED. LET'S USE THE HARD COPY.

11:00AM 8 MS. ROBINSON, CAN WE USE THE ELMO FOR THAT?

11:00AM 9 EXHIBIT 5545 WAS PREVIOUSLY ADMITTED. MAY I PUBLISH,

11:00AM 10 YOUR HONOR?

11:00AM 11 THE COURT: YES.

11:00AM 12 BY MR. BOSTIC:

11:00AM 13 Q. DR. PANDORI, DO YOU SEE ON THE SCREEN TRIAL EXHIBIT 5545?

11:00AM 14 A. I SEE SOMETHING ON THE SCREEN, BUT I DON'T SEE THAT

11:00AM 15 NUMBER. I'M SORRY.

11:00AM 16 Q. THAT'S ALL RIGHT.

11:01AM 17 DO YOU SEE NOW AT THE BOTTOM THE EXHIBIT NUMBER?

11:01AM 18 A. YES, I SEE THAT EXHIBIT NUMBER.

11:01AM 19 Q. OKAY. DO YOU RECALL DISCUSSING THIS DOCUMENT WITH

11:01AM 20 MR. CAZARES?

11:01AM 21 A. WOULD YOU PLEASE MOVE THE DOCUMENT UPWARD?

11:01AM 22 YES.

11:01AM 23 Q. YES. AND THIS IS ALSO IN VOLUME 1 IN CASE YOU WOULD LIKE

11:01AM 24 TO FLIP THROUGH IT AT THE SAME TIME, BUT THAT'S UP TO YOU.

11:01AM 25 A. IT'S CLEARLY VISIBLE ON THE SCREEN NOW.

11:01AM 1 Q. I'LL DRAW YOUR ATTENTION TO PAGE 3 OF THIS DOCUMENT.

11:01AM 2 A. YES.

11:01AM 3 Q. AND DO YOU SEE THERE AN EMAIL FROM LAGLY GEE TO YOU AND

11:01AM 4 OTHERS AT THERANOS WITH THE SUBJECT LINE UPDATED PT/AUDIT

11:01AM 5 RENEWALS SINCE 3/18?

11:01AM 6 A. I SEE IT.

11:01AM 7 Q. AND IT SAYS, "HERE ARE SURVEYS PERFORMED AND SCORES AND

11:01AM 8 UPDATE TO LICENSURES SINCE 3/18."

11:01AM 9 DO YOU SEE THAT?

11:01AM 10 A. YES.

11:02AM 11 Q. AND I'D LIKE TO ASK YOU ABOUT THE ACTUAL TESTING THAT IS

11:02AM 12 LISTED HERE.

11:02AM 13 DO YOU SEE A LIST BELOW OF DATES AND SURVEYS AND SCORES?

11:02AM 14 A. I DO.

11:02AM 15 Q. AND DO YOU UNDERSTAND THESE TO BE PROFICIENCY TESTING

11:02AM 16 RESULTS?

11:02AM 17 A. I DO.

11:02AM 18 Q. ARE THESE REFLECTING PROFICIENCY TESTING RESULTS FOR

11:02AM 19 TESTING PERFORMED ON THE THERANOS EDISON?

11:02AM 20 A. FOR SOME OF THESE THERE'S NO WAY THAT COULD HAVE BEEN THE

11:02AM 21 CASE.

11:02AM 22 Q. WHY DO YOU SAY THAT?

11:02AM 23 A. BECAUSE FOR A LOT OF THESE THERE WERE NO, AT THAT TIME,

11:02AM 24 EDISON TESTS THAT RAN THOSE TESTS.

11:02AM 25 Q. FOR EXAMPLE, WERE YOU -- WHERE IT SAYS API HEMATOLOGY, WAS

11:02AM 1 THE EDISON CAPABLE OF RUNNING ANY HEMATOLOGY TESTS DURING YOUR
11:02AM 2 TIME AT THE COMPANY?

11:02AM 3 A. NO.

11:02AM 4 THAT WOULD ALSO HAVE BEEN TRUE FOR CAP INFECTIOUS DISEASE
11:02AM 5 SEROLOGY. I ONLY REMEMBER ONE. THOSE ARE GOING TO BE PANELS.
11:02AM 6 SO WHEN THEY COME, YOU DON'T NECESSARILY KNOW.

11:03AM 7 THERE MIGHT BE SEVERAL INFECTIOUS DISEASES IN A PANEL LIKE
11:03AM 8 THAT, AND I ONLY REMEMBER ONE EVER BEING CONSIDERED ON THE
11:03AM 9 EDISON.

11:03AM 10 Q. HOW ABOUT SOMETHING LIKE CLINICAL MICROSCOPY? COULD THAT
11:03AM 11 HAVE RELATED TO THE EDISON?

11:03AM 12 A. NO.

11:03AM 13 Q. SITTING HERE TODAY, ARE YOU ABLE TO SEE WHETHER ANY OF
11:03AM 14 THIS PROFICIENCY TESTING ACTUALLY RELATED TO THE THERANOS
11:03AM 15 ANALYZER.

11:03AM 16 A. NO, I CAN'T.

11:03AM 17 Q. I'D LIKE TO SHOW YOU ANOTHER EXHIBIT THAT YOU DISCUSSED
11:03AM 18 WITH MR. CAZARES, AND THAT'S NUMBER 20444. I THINK THAT'S IN
11:04AM 19 VOLUME 2.

11:04AM 20 THIS WAS PREVIOUSLY ADMITTED.

11:04AM 21 MAY I PUBLISH, YOUR HONOR?

11:04AM 22 THE COURT: YES.

11:04AM 23 BY MR. BOSTIC:

11:04AM 24 Q. AND, DR. PANDORI, DO YOU SEE TRIAL EXHIBIT 20444 ON THE
11:04AM 25 SCREEN?

11:04AM 1 A. YES.

11:04AM 2 Q. THE SCREEN FROZE.

11:04AM 3 THE CLERK: SHE HAS IT UP.

11:04AM 4 MR. BOSTIC: OH. EVEN BETTER.

11:04AM 5 Q. LET'S GO TO THE SECOND PAGE OF THIS DOCUMENT, PLEASE.

11:05AM 6 A. I'M THERE.

11:05AM 7 Q. AND LET'S ZOOM IN ON ITEM NUMBER 8.

11:05AM 8 AND DO YOU REMEMBER DISCUSSING THIS LANGUAGE WITH

11:05AM 9 MR. CAZARES?

11:05AM 10 A. YES.

11:05AM 11 Q. IT STATES HERE THAT YOU HAD REVIEWED VALIDATIONS THAT WERE

11:05AM 12 EXCELLENT, BUT THEY WERE MISSING AN ELEMENT, STATING THAT THE

11:05AM 13 TEST WAS SAFE FOR USE ON PEOPLE.

11:05AM 14 DO YOU SEE THAT?

11:05AM 15 A. YES.

11:05AM 16 Q. THE SUBJECT LINE TO THIS EMAIL IS NAAT VALIDATIONS; IS

11:05AM 17 THAT CORRECT?

11:05AM 18 A. YES.

11:05AM 19 Q. DOES THAT RELATE TO A CERTAIN KIND OF ASSAY?

11:05AM 20 A. YES, IT DOES.

11:05AM 21 Q. AND WAS THAT KIND OF TEST RUN ON THE EDISON DEVICE?

11:05AM 22 A. NO, IT WAS NOT.

11:05AM 23 Q. SO THE TEST THAT YOU'RE TALKING ABOUT IN THIS EMAIL WHERE

11:05AM 24 YOU SAY THAT THE VALIDATIONS WERE EXCELLENT, OR WHERE YOU SAY

11:05AM 25 THAT THE TEST IS SAFE FOR PEOPLE, DOES THAT ACTUALLY RELATE TO

11:05AM 1 TESTING DONE ON THE THERANOS ANALYZER THAT YOU WORKED WITH IN

11:06AM 2 THE LAB?

11:06AM 3 A. IT DOES NOT.

11:06AM 4 Q. OKAY. WE CAN SET THAT ASIDE.

11:06AM 5 I WON'T PUT IT UP RIGHT NOW, BUT DO YOU RECALL IN THE LAST

11:06AM 6 PORTION OF YOUR CONVERSATION WITH MR. CAZARES LOOKING AT AN

11:06AM 7 EMAIL FROM YOU TO MR. BALWANI WHERE YOU PRAISED THE CALIBER OF

11:06AM 8 THE PEOPLE AT THERANOS AND YOU EXPRESSED A POSITIVE ATTITUDE

11:06AM 9 ABOUT THE COMPANY?

11:06AM 10 A. YEAH, I REMEMBER THAT.

11:06AM 11 Q. AND DO YOU RECALL THAT THAT EMAIL WAS FROM RELATIVELY

11:06AM 12 EARLY ON IN YOUR TIME AT THE COMPANY?

11:06AM 13 A. YES, I RECALL THAT.

11:06AM 14 Q. AND DID THAT GENUINELY REFLECT YOUR ATTITUDE ABOUT

11:06AM 15 THERANOS AT THE TIME?

11:06AM 16 A. IT DID AT THAT TIME.

11:06AM 17 Q. DID THAT POSITIVE ATTITUDE ABOUT THE COMPANY CHANGE OVER

11:06AM 18 THE COURSE OF YOUR EMPLOYMENT AT THERANOS?

11:06AM 19 A. CAN YOU RESTATE THE QUESTION, PLEASE?

11:06AM 20 Q. SURE. THE VIEWS THAT YOU EXPRESSED IN THAT EMAIL --

11:07AM 21 A. YES.

11:07AM 22 Q. -- WHERE YOU WERE POSITIVE AND HOPEFUL ABOUT THE COMPANY,

11:07AM 23 DID YOU KEEP FEELING THAT WAY THROUGHOUT YOUR TIME WORKING AT

11:07AM 24 THERANOS?

11:07AM 25 A. WELL, THERE WERE TWO EXPRESSIONS THERE. ONE WAS THE

11:07AM 1 CALIBER OF THE PEOPLE, BUT THE OVERALL FEELING OF THE COMPANY.

11:07AM 2 THERE WERE -- I LEFT THERE STILL FEELING THAT THERE WAS A
11:07AM 3 VERY HIGH CALIBER OF PERSONS THAT WERE WORKING THERE, BUT I
11:07AM 4 DIDN'T HAVE A HIGH OPINION OF THE COMPANY OVERALL.

11:07AM 5 Q. IN THAT EMAIL YOU EXPRESSED OPTIMISM ABOUT THE COMPANY'S
11:07AM 6 CHANCE OF SUCCESS.

11:07AM 7 DO YOU RECALL THAT?

11:07AM 8 A. EXCITEMENT.

11:07AM 9 Q. AND DID THAT EXCITEMENT STAY WITH YOU THROUGHOUT YOUR TIME
11:07AM 10 AT THE COMPANY?

11:07AM 11 A. IT DID NOT.

11:07AM 12 Q. OKAY. AND CAN YOU SUMMARIZE WHY NOT?

11:07AM 13 A. WELL, FOR ONE, THE TESTS THAT WERE DEVELOPED AT THERANOS,
11:07AM 14 THE EDISONS DIDN'T WORK VERY WELL.

11:07AM 15 THEY -- IT REQUIRED THAT WE HAVE A LOT OF MACHINES, AND
11:07AM 16 MANY OF THE MACHINES WOULD FAIL REGULARLY, AND THAT'S WHY WE
11:07AM 17 NEEDED A LOT OF MACHINES.

11:08AM 18 THE CHEMISTRIES WERE RUN ON MODIFIED THIRD PARTY DEVICES,
11:08AM 19 THEY WEREN'T RUN ON THERANOS TECHNOLOGY, AND THEY FACED
11:08AM 20 CHALLENGES AS WELL.

11:08AM 21 THE -- WHEN WE, THAT WOULD BE LAB DIRECTORS OR CLIA
11:08AM 22 PERSONNEL, SOUGHT TO DO OUR JOBS AND TO TROUBLESHOOT OR TO
11:08AM 23 MAYBE PUT CERTAIN TESTING ASIDE WHILE WE WORKED ON THEM, WE MET
11:08AM 24 CHALLENGES WITH MANAGEMENT WHEN WE SOUGHT TO DO THAT.

11:08AM 25 AND SO IT DIDN'T FEEL LIKE A VERY GOOD PLACE TO ME. I

11:08AM 1 WANTED THIS TO BE -- I THOUGHT THIS WAS SOMETHING MORE MATURE
11:08AM 2 IN ASSISTING THE PUBLIC'S HEALTH AND IT WAS FAR FROM THAT.

11:08AM 3 Q. I WOULD LIKE TO TALK NOW ABOUT THE DAYS LEADING UP TO YOUR
11:08AM 4 DEPARTURE FROM THE COMPANY.

11:08AM 5 FIRST, JUST SO WE'RE CLEAR, DO YOU RECALL CONVERSATIONS
11:08AM 6 ABOUT A MEETING THAT YOU HAD WITH MR. BALWANI AND MS. HOLMES
11:08AM 7 WHERE YOU SUGGESTED MEETINGS SO THAT MS. HOLMES COULD MAKE
11:09AM 8 SURE, FOR EXAMPLE, THAT SHE WAS PROVIDING ACCURATE INFORMATION
11:09AM 9 ABOUT THE COMPANY?

11:09AM 10 A. YES, I RECALL.

11:09AM 11 Q. AND DO YOU KNOW EXACTLY WHEN THAT MEETING HAPPENED SITTING
11:09AM 12 HERE TODAY?

11:09AM 13 A. NO.

11:09AM 14 Q. YOU TESTIFIED EARLIER THAT IT WAS SOMETIME AROUND YOUR
11:09AM 15 BIRTHDAY.

11:09AM 16 A. YES.

11:09AM 17 Q. YOU TESTIFIED THAT YOU RESIGNED VERY SHORTLY AFTER THAT
11:09AM 18 MEETING.

11:09AM 19 IS THAT STILL YOUR TESTIMONY?

11:09AM 20 A. YES.

11:09AM 21 Q. AND WHEN YOU RESIGNED, DID YOU WALK OUT OF THE BUILDING
11:09AM 22 IMMEDIATELY THAT DAY, OR WAS THAT YOU GIVING YOUR TWO WEEK
11:09AM 23 NOTICE, OR SOMETHING ELSE?

11:09AM 24 A. MY RECOLLECTION IS THAT I HAD A CONVERSATION WITH
11:09AM 25 MONA RAMAMURTHY WHEREUPON SHE -- WELL, I DON'T REMEMBER THE

11:09AM 1 EXACT NATURE OF THAT.

11:09AM 2 AND I REMEMBER GOING TO -- EXITING THROUGH THE SECURITY
11:09AM 3 OFFICE AND TALKING TO SOMEBODY NAMED EDGAR, AND THEN I REMEMBER
11:10AM 4 HE EITHER COMING OUTSIDE WITH ME OR WALKING ME ALL OF THE WAY,
11:10AM 5 I'M NOT SURE I REMEMBER, TO MY CAR.

11:10AM 6 AND HE SAID TO ME, SUNNY CALLED DOWN AND SAID I HAVE TO
11:10AM 7 SEARCH YOUR CAR.

11:10AM 8 AND I SAID, YOU DON'T HAVE TO SEARCH MY CAR, EDGAR.

11:10AM 9 AND HE SAID, YOU'RE RIGHT, I DON'T HAVE TO SEARCH YOUR
11:10AM 10 CARE.

11:10AM 11 AND I LEFT.

11:10AM 12 Q. SO THAT MOMENT STANDS OUT IN YOUR MIND?

11:10AM 13 A. YEAH.

11:10AM 14 Q. AND DO YOU HAVE A MEMORY ONE WAY OR ANOTHER OF WHETHER
11:10AM 15 THAT HAPPENED ON THE SAME DAY AS YOUR MEETING WITH MR. BALWANI
11:10AM 16 AND MS. HOLMES, OR A WEEK LATER? CAN YOU TELL US ONE WAY OR
11:10AM 17 ANOTHER?

11:10AM 18 A. I RECALL IT HAPPENING THE SAME DAY.

11:10AM 19 Q. THERE WAS DISCUSSION WITH MR. CAZARES ABOUT THE "WIRED"
11:10AM 20 ARTICLE AS WELL WHERE YOU SAW SOME INACCURATE OR MISLEADING
11:10AM 21 STATEMENTS.

11:10AM 22 DO YOU RECALL THAT?

11:10AM 23 A. I RECALL.

11:10AM 24 Q. AND MR. CAZARES ASKED YOU WHETHER YOU HAD IN FACT RECEIVED
11:10AM 25 THAT ARTICLE IN FEBRUARY OF 2014; IS THAT RIGHT?

11:10AM 1 A. HE DID.

11:10AM 2 Q. AND I'LL ASK YOU TO TURN TO -- OR ACTUALLY LET'S PROJECT

11:10AM 3 EXHIBIT 1599, WHICH IS THAT ARTICLE. THIS WAS PREVIOUSLY

11:11AM 4 ADMITTED.

11:11AM 5 ACTUALLY, NO, LET'S TAKE THAT DOWN. I'M SORRY?

11:11AM 6 MR. CAZARES: THAT'S NOT IN EVIDENCE.

11:11AM 7 MR. BOSTIC: IT'S NOT IN EVIDENCE.

11:11AM 8 Q. DR. PANDORI, APOLOGIES.

11:11AM 9 IF I COULD ASK YOU TO TURN TO EXHIBIT 1599. AND THAT'S

11:11AM 10 IN --

11:11AM 11 A. DO YOU KNOW WHAT VOLUME THAT IS IN?

11:11AM 12 Q. THAT'S IN THE WHITE BINDER, THE GOVERNMENT BINDER.

11:11AM 13 A. OKAY. I'M THERE.

11:11AM 14 Q. AND WE WERE JUST TALKING ABOUT MR. CAZARES'S QUESTIONS TO

11:11AM 15 YOU ABOUT WHETHER YOU HAD RECEIVED THAT ARTICLE IN FEBRUARY OF

11:11AM 16 2014.

11:11AM 17 DO YOU REMEMBER THAT DISCUSSION?

11:11AM 18 A. YES, I REMEMBER THAT DISCUSSION.

11:11AM 19 Q. LOOKING AT EXHIBIT 1599, IS THERE A DATE INDICATED ON THAT

11:11AM 20 ARTICLE?

11:11AM 21 A. YES.

11:11AM 22 Q. AND WHAT IS THE DATE ON THE ARTICLE?

11:11AM 23 A. MARCH 2014.

11:11AM 24 Q. MR. CAZARES SHOWED YOU AN EMAIL WITH A LINK TO A "WIRED"

11:11AM 25 ARTICLE.

11:11AM 1 DO YOU REMEMBER THAT?

11:11AM 2 A. YES.

11:11AM 3 Q. AND DO YOU KNOW WHETHER THAT LINK WAS TO THE ACTUAL

11:12AM 4 ARTICLE THAT WE HAVE BEEN TALKING ABOUT?

11:12AM 5 A. NO, I DON'T KNOW THE ANSWER TO THAT QUESTION.

11:12AM 6 Q. ASSUMING THAT IT WAS AND THE LINK WAS EMAILED TO YOU IN

11:12AM 7 FEBRUARY, DO YOU HAVE A MEMORY OF WHETHER YOU READ THE ARTICLE

11:12AM 8 ON THE DAY THAT YOU RECEIVED IT OR SOMETIME LATER? DO YOU KNOW

11:12AM 9 THAT?

11:12AM 10 A. NO, I DON'T KNOW THAT.

11:12AM 11 Q. I'D LIKE TO TALK TO YOU ABOUT EXHIBIT 20277.

11:12AM 12 MS. WACHS, DO WE HAVE THAT ACCESSIBLE ELECTRONICALLY?

11:12AM 13 AND THIS WAS PREVIOUSLY ADMITTED.

11:12AM 14 A. OKAY.

11:12AM 15 Q. AND LET'S ZOOM IN ON THE TEXT OF YOUR EMAIL IN THE MIDDLE

11:12AM 16 OF THE PAGE, JUST THE FIRST FEW PARAGRAPHS.

11:12AM 17 DO YOU REMEMBER READING THIS WITH MR. CAZARES?

11:13AM 18 A. YES.

11:13AM 19 Q. AND YOU WRITE, "ADAM AND I WERE ABLE TO DISCUSS WITH ONE

11:13AM 20 ANOTHER THE RESULTS OF OUR ONE ON ONE CONVERSATIONS WITH EACH

11:13AM 21 OF YOU, AND ONE OF EVERYONE'S PRIMARY CONCERNS IS WORK HOURS."

11:13AM 22 DO YOU SEE THAT?

11:13AM 23 A. YES.

11:13AM 24 Q. MR. CAZARES POINTED OUT THAT THIS EMAIL DOES NOT MENTION

11:13AM 25 ANY CONCERNS ABOUT THE ACCURACY OR RELIABILITY OF THE DEVICES;

11:13AM 1 IS THAT RIGHT?

11:13AM 2 A. CORRECT.

11:13AM 3 Q. WHEN YOU WERE AT THERANOS, DID OTHER STAFF IN THE CLIA LAB

11:13AM 4 EXPRESS CONCERNS TO YOU ABOUT THE ACCURACY OR THE RELIABILITY

11:13AM 5 OF THE EDISON DEVICES?

11:13AM 6 MR. CAZARES: OBJECTION. HEARSAY.

11:13AM 7 MR. BOSTIC: THE DEFENSE OPENED THE DOOR TO THIS,

11:13AM 8 YOUR HONOR.

11:13AM 9 MR. CAZARES: IT'S STILL HEARSAY.

11:13AM 10 THE COURT: IS THIS A YES OR NO ANSWER?

11:13AM 11 MR. BOSTIC: YES, YOUR HONOR, FOR NOW.

11:13AM 12 THE COURT: OVERRULED.

11:13AM 13 YOU CAN ANSWER YES OR NO.

11:13AM 14 THE WITNESS: YES.

11:13AM 15 BY MR. BOSTIC:

11:13AM 16 Q. AND WAS THAT SOMETHING THAT HAPPENED ON MULTIPLE

11:13AM 17 OCCASIONS?

11:13AM 18 MR. CAZARES: SAME OBJECTION.

11:13AM 19 THE COURT: OVERRULED.

11:14AM 20 YES OR NO?

11:14AM 21 THE WITNESS: YES.

11:14AM 22 BY MR. BOSTIC:

11:14AM 23 Q. IN THE EMAIL YOU WRITE, "ONE OF EVERYONE'S PRIMARY

11:14AM 24 CONCERNS IS WORK HOURS."

11:14AM 25 WHEN YOU WROTE THAT, DID YOU MEAN TO IMPLY THAT NO ONE HAD

11:14AM 1 ANY CONCERNS ABOUT ACCURACY OR RELIABILITY?

11:14AM 2 A. NO, I DIDN'T MEAN TO IMPLY THAT.

11:14AM 3 Q. OF THE INDIVIDUALS WHO EXPRESSED CONCERNS TO YOU ABOUT

11:14AM 4 ACCURACY AND RELIABILITY, WAS ERIKA CHEUNG ONE OF THEM?

11:14AM 5 MR. CAZARES: OBJECTION. IT CALLS FOR HEARSAY.

11:14AM 6 THE COURT: SUSTAINED.

11:14AM 7 BY MR. BOSTIC:

11:14AM 8 Q. LET'S TALK ABOUT THE TRANSITION MEMO THAT YOU REVIEWED

11:14AM 9 WITH MR. CAZARES.

11:14AM 10 WE CAN TAKE THIS EXHIBIT DOWN.

11:14AM 11 AND CAN WE PUT UP EXHIBIT 20279.

11:14AM 12 DR. PANDORI, DO YOU REMEMBER REVIEWING THIS EXHIBIT WITH

11:15AM 13 MR. CAZARES?

11:15AM 14 A. I DO.

11:15AM 15 Q. SITTING HERE TODAY, DO YOU HAVE A MEMORY OF WRITING THE

11:15AM 16 TRANSITION MEMO THAT WE'VE BEEN DISCUSSING?

11:15AM 17 A. I DON'T HAVE A MEMORY OF IT.

11:15AM 18 Q. YOU WERE ALSO SHOWN EXHIBIT 20498.

11:15AM 19 CAN WE PUT THAT ONE UP, MS. WACHS.

11:15AM 20 DR. PANDORI, YOU SEE THAT THIS IS AN EMAIL THAT ACTUALLY

11:15AM 21 HAS A FROM LINE THAT INDICATES THAT THE EMAIL IS FROM YOU.

11:15AM 22 DO YOU SEE THAT?

11:15AM 23 A. YES.

11:15AM 24 Q. THE PREVIOUS EXHIBIT THAT WE LOOKED AT, 20279, LACKED A

11:15AM 25 FROM LINE; IS THAT CORRECT?

11:15AM 1 A. CORRECT.

11:15AM 2 Q. DID MR. CAZARES SHOW YOU THIS EXHIBIT BEFORE HE ASKED YOU

11:15AM 3 ABOUT WHETHER YOU HAD WRITTEN THE TRANSITION MEMO?

11:15AM 4 A. NO, THAT'S NOT THE ORDER OF THINGS.

11:16AM 5 Q. WOULD IT HAVE BEEN HELPFUL TO YOUR RECOLLECTION OF THINGS

11:16AM 6 TO HAVE SEEN THIS EMAIL BEFORE YOU WERE ASKED ABOUT THAT FIRST

11:16AM 7 EMAIL WITH NO FROM LINE?

11:16AM 8 A. TO SEE THIS EMAIL WITHOUT HAVING SEEN THE TRANSITION

11:16AM 9 DOCUMENT?

11:16AM 10 Q. DO YOU SEE THAT THIS EMAIL ATTACHES AN ATTACHMENT

11:16AM 11 INDICATING THAT IT IS THE TRANSITION MEMO?

11:16AM 12 A. YES.

11:16AM 13 Q. AND WOULD HAVING SEEN THIS EXHIBIT FIRST HAVE BEEN HELPFUL

11:16AM 14 TO YOU?

11:16AM 15 A. IF IT INCLUDE -- NO -- PERHAPS.

11:16AM 16 Q. DOES SEEING THIS EXHIBIT HELP YOUR UNDERSTANDING AS FAR AS

11:16AM 17 WHETHER OR NOT YOU SENT THIS EMAIL?

11:16AM 18 A. DOES IT -- IT HAS A FROM LINE, WHICH MAKES ME FEEL MORE

11:16AM 19 INCLINED THAT I DID.

11:16AM 20 Q. AND IN THIS EXHIBIT IN PARTICULAR, YOU SEND THE TRANSITION

11:17AM 21 REPORT TO MONA RAMAMURTHY AND SUNNY BALWANI; IS THAT CORRECT?

11:17AM 22 A. YES.

11:17AM 23 Q. LET'S LOOK AT THE TEXT OF THAT MEMO ITSELF. IF WE CAN

11:17AM 24 FLIP FORWARD THROUGH THE DOCUMENT.

11:17AM 25 LET'S GO TO -- KEEP GOING. WE'RE LOOKING FOR THE SECTION

11:17AM 1 ON EDISONS, WHICH I THINK IS ON PAGE 6. THERE WE GO.

11:17AM 2 OKAY. DO YOU SEE UNDER OTHER NOTES THERE'S A SECTION ON

11:17AM 3 EDISONS?

11:17AM 4 A. YES.

11:17AM 5 Q. AND IT SAYS HERE, "THE PRIMARY CONCERN IN THIS SECTION IS

11:17AM 6 THE AVAILABLE NUMBER OF DEVICES."

11:17AM 7 DO YOU SEE THAT?

11:17AM 8 A. YES.

11:17AM 9 Q. ARE YOU GENERALLY FAMILIAR WITH THE CONCEPT OF A

11:17AM 10 TRANSITION MEMO?

11:17AM 11 A. YES.

11:17AM 12 Q. IN THIS CASE, WHAT WOULD THE GOAL HAVE BEEN IN WRITING

11:18AM 13 THIS MEMO DURING THE TIME THAT YOU WERE LEAVING THE COMPANY?

11:18AM 14 MR. CAZARES: OBJECTION. FOUNDATION. CALLS FOR

11:18AM 15 SPECULATION BASED ON THE WITNESS'S TESTIMONY ALREADY.

11:18AM 16 THE COURT: REGARDING WHETHER HE WROTE IT OR NOT? I

11:18AM 17 THINK THERE'S A FOUNDATION.

11:18AM 18 SUSTAINED.

11:18AM 19 BY MR. BOSTIC:

11:18AM 20 Q. LET'S LOOK INSTEAD AT 20496.

11:18AM 21 DR. PANDORI, DO YOU REMEMBER DISCUSSING THIS EXHIBIT WITH

11:18AM 22 MR. CAZARES?

11:18AM 23 A. YES.

11:18AM 24 Q. AND IS THIS AN EMAIL FROM MS. RAMAMURTHY ASKING FOR A

11:18AM 25 TRANSITION MEMO?

11:18AM 1 A. IT'S ASKING ME FOR SOME INFORMATION ABOUT THE LAB.

11:18AM 2 Q. OKAY. AND DID THE TRANSITION MEMO THAT WE LOOKED AT

11:18AM 3 SATISFY THIS REQUEST?

11:19AM 4 A. YES.

11:19AM 5 Q. AND MR. CAZARES POINTED OUT THAT THIS ASKS FOR ANYTHING

11:19AM 6 ELSE THAT YOU BELIEVE NEEDS TO BE DOCUMENTED FOR EFFECTIVE

11:19AM 7 TRANSITION PURPOSES.

11:19AM 8 DO YOU SEE THAT?

11:19AM 9 A. I DO.

11:19AM 10 Q. FOR EFFECTIVE TRANSITION PURPOSES IN THE SITUATION THAT

11:19AM 11 YOU WERE IN, WHY DID YOU DECIDE NOT TO DOCUMENT THE CONCERNS

11:19AM 12 THAT YOU HAD ABOUT THE ACCURACY AND RELIABILITY OF THERANOS

11:19AM 13 TESTING?

11:19AM 14 MR. CAZARES: OBJECTION. SPECULATION. IT CALLS FOR

11:19AM 15 SPECULATION BASED ON THE WITNESS'S TESTIMONY ALREADY.

11:19AM 16 THE COURT: OVERRULED.

11:19AM 17 YOU CAN ANSWER THE QUESTION.

11:19AM 18 BY MR. BOSTIC:

11:19AM 19 Q. WOULD YOU LIKE THE QUESTION AGAIN, DOCTOR?

11:19AM 20 A. NO. I HAD ALREADY MADE MY CONCERNS KNOWN AT THAT TIME,

11:19AM 21 AND WHAT I WANTED TO HAVE DONE, NOBODY WAS GOING TO DO THAT, SO

11:19AM 22 WHAT POINT WAS THERE TO PUSH THIS FURTHER.

11:19AM 23 THERE WAS NO -- I DIDN'T HAVE THE AUTHORITY TO MAKE THAT

11:19AM 24 DECISION. ASKING REPEATEDLY WOULD BE SOMEWHAT AKIN TO HITTING

11:19AM 25 YOUR HEAD AGAINST THE WALL.

11:19AM 1 Q. AND WE SAW A FEW MINUTES AGO THAT THIS TRANSITION MEMO WAS
11:20AM 2 SENT TO MR. BALWANI; IS THAT CORRECT?

11:20AM 3 A. IN ADDITION TO MS. MONA RAMAMURTHY, I BELIEVE.

11:20AM 4 Q. AND YOU SAID THAT YOU HAD PREVIOUSLY RAISED YOUR CONCERNS.
11:20AM 5 HAD YOU SPECIFICALLY RAISED THOSE CONCERNS TO MR. BALWANI
11:20AM 6 HIMSELF?

11:20AM 7 A. YES.

11:20AM 8 Q. AND WE ALSO SAW AN INSTANCE WHERE THE TRANSITION MEMO WAS
11:20AM 9 SENT TO DR. ROSENDORFF; IS THAT CORRECT?

11:20AM 10 A. CORRECT.

11:20AM 11 Q. AND AT THAT POINT HAD YOU ALREADY RAISED YOUR CONCERNS TO
11:20AM 12 DR. ROSENDORFF?

11:20AM 13 A. ON MANY OCCASIONS.

11:20AM 14 Q. DESCRIBE THAT. HOW FREQUENTLY DID YOU HAVE THESE
11:20AM 15 CONVERSATIONS AND HOW DID THAT TOPIC COME UP?

11:20AM 16 A. MORE THAN ONCE PER WEEK, AND IT CAME UP BECAUSE IT WAS A
11:20AM 17 NORMAL COURSE OF CONVERSATION BETWEEN DR. ROSENDORFF AND
11:20AM 18 MYSELF.

11:20AM 19 Q. AND WHEN WE'RE TALKING ABOUT THIS SUBJECT, WHAT DO YOU
11:20AM 20 MEAN SPECIFICALLY? WHAT ISSUES WERE BEING DISCUSSED ON A
11:20AM 21 REGULAR OCCASION WITH DR. ROSENDORFF?

11:20AM 22 A. THE QUALITY OF THE MACHINERY AND THE QUALITY OF LAB
11:21AM 23 TESTING AT NORMANDY.

11:21AM 24 Q. SO FOR THIS TRANSITION MEMO, IF IT WAS FOR
11:21AM 25 DR. ROSENDORFF'S BENEFIT, WOULD THERE HAVE BEEN ANY NEED TO

11:21AM 1 INCLUDE THOSE CONCERNS IN THE TRANSITION MEMO?

11:21AM 2 MR. CAZARES: OBJECTION. CALLS FOR SPECULATION AND
11:21AM 3 FOUNDATION.

11:21AM 4 THE COURT: ARE YOU ASKING IF HE SENT THIS TO
11:21AM 5 DR. ROSENDORFF?

11:21AM 6 MR. BOSTIC: NO. I'M ASKING HIM ABOUT HIS PREVIOUS
11:21AM 7 CONVERSATIONS AND WHETHER ADDITIONAL DETAIL WOULD HAVE BEEN
11:21AM 8 NECESSARY.

11:21AM 9 MR. CAZARES: AGAIN, IT CALLS FOR FOUNDATION AND
11:21AM 10 SPECULATION BASED ON HIS TESTIMONY ABOUT THE MEMO.

11:21AM 11 THE COURT: I'LL SUSTAIN THE OBJECTION TO THAT
11:21AM 12 QUESTION.

11:21AM 13 BY MR. BOSTIC:

11:22AM 14 Q. LET'S GO BACK TO THAT MEMO ITSELF.

11:22AM 15 SO IF WE CAN LOOK AT 20279 AND GO BACK TO THE SECTION ON
11:22AM 16 EDISONS, WHICH I THINK IS PAGE 6.

11:22AM 17 AND, DR. PANDORI, IN THIS SECTION YOU MENTION A NEED FOR
11:22AM 18 MORE UNITS; IS THAT CORRECT?

11:22AM 19 A. CORRECT.

11:22AM 20 Q. AND WE SAW OTHER INSTANCES WHERE YOU RECOMMENDED THAT THE
11:22AM 21 LAB OBTAIN AND USE MORE EDISON ANALYZERS; IS THAT RIGHT?

11:22AM 22 A. THAT'S CORRECT.

11:22AM 23 Q. AND WHY WAS THAT YOUR RECOMMENDATION IF YOU HAD CONCERNS
11:22AM 24 ABOUT THE ACCURACY AND RELIABILITY OF THE EDISONS?

11:22AM 25 A. WELL, WE DIDN'T FULLY UNDERSTAND THE NATURE OF THE TROUBLE

11:22AM 1 WITH THE INSTRUMENT. THAT WAS STILL BEING ASCERTAINED.

11:22AM 2 BUT SOME OF THEM WOULD PASS QUALITY CONTROL, AND SO IF YOU
11:22AM 3 WANTED TO GET PATIENT SPECIMENS DONE, YOU COULD TEST A WIDER
11:23AM 4 NUMBER OF INSTRUMENTS AND SEE WHICH ONCE WERE FUNCTIONING
11:23AM 5 CORRECTLY.

11:23AM 6 Q. WE TALKED EARLIER ABOUT HOW MANY EDISONS WERE REQUIRED TO
11:23AM 7 RUN A PATIENT SAMPLE.

11:23AM 8 DO YOU RECALL THAT?

11:23AM 9 A. YES.

11:23AM 10 Q. HOW MANY EDISONS WERE NEEDED IN A GROUP TO RUN A SINGLE
11:23AM 11 PATIENT ASSAY?

11:23AM 12 A. WELL, IT DEPENDS IF I ANSWER ON AVERAGE. BUT ONE EDISON,
11:23AM 13 IF IT WAS WORKING CORRECTLY, COULD TEST ONE PATIENT SAMPLE.

11:23AM 14 Q. ARE YOU AWARE OF A PRACTICE AT THERANOS WHERE DEVICES WERE
11:23AM 15 USED IN GROUPS OF THREE AND THEN SAMPLES, SAMPLE RESULTS WERE
11:23AM 16 AVERAGED OUT?

11:23AM 17 A. YES.

11:23AM 18 Q. DID THAT NEED, THE NEED TO RUN SAMPLES IN GROUPS OF THREE,
11:23AM 19 INCREASE THE NEED FOR ADDITIONAL EDISONS?

11:23AM 20 A. YES.

11:24AM 21 Q. DO YOU REMEMBER BEING SHOWN AN EMAIL BY MR. CAZARES WHERE
11:24AM 22 MR. BALWANI TOLD YOU THAT INVOLVEMENT OF THE PRODUCT MANAGEMENT
11:24AM 23 TEAM SHOULD BE ON YOUR TERMS?

11:24AM 24 A. YES.

11:24AM 25 Q. AND WAS THAT HOW IT ENDED UP WORKING DURING YOUR TIME AT

11:24AM 1 THERANOS?

11:24AM 2 A. NO.

11:24AM 3 Q. AND HOW DID IT ACTUALLY WORK AT THERANOS?

11:24AM 4 A. FOR THE ENTIRETY OF MY TIME AT THERANOS, PRODUCT

11:24AM 5 MANAGEMENT TEAM MEMBERS HAD A SIGNIFICANT INFLUENCE IN ALL

11:24AM 6 MATTERS THAT I ENGAGED IN.

11:24AM 7 Q. INCLUDING CLINICAL MATTERS?

11:24AM 8 A. YES.

11:24AM 9 Q. AND WHO DID THE PRODUCT MANAGEMENT TEAM REPORT TO?

11:24AM 10 A. I DON'T REMEMBER THEIR STRUCTURE EXACTLY. I BELIEVED IT

11:24AM 11 WAS SUNNY BALWANI.

11:24AM 12 Q. DO YOU RECALL TESTIFYING ABOUT A TIME WHERE MR. BALWANI

11:24AM 13 CAME TO YOUR OFFICE TO CONFRONT YOU ABOUT YOUR VIEWS ON THE

11:24AM 14 EDISON?

11:24AM 15 A. YES.

11:24AM 16 Q. AND CAN YOU REMIND US WHO ACCOMPANIED HIM WHEN HE CAME TO

11:24AM 17 YOUR OFFICE TO DISCUSS THAT?

11:25AM 18 A. TWO PRODUCT MANAGERS.

11:25AM 19 Q. DO YOU RECALL, DURING CROSS-EXAMINATION, TALKING WITH

11:25AM 20 MR. CAZARES ABOUT CLIA REGULATIONS AND WHAT THEY SAY ABOUT THE

11:25AM 21 ROLE OF LAB DIRECTOR?

11:25AM 22 A. YES.

11:25AM 23 Q. AND WOULD YOU AGREE THAT CLIA REGULATIONS IN GENERAL SAY

11:25AM 24 THAT THE LAB DIRECTOR HAS A LOT OF AUTHORITY?

11:25AM 25 A. YES.

11:25AM 1 Q. AND THAT THE LAB DIRECTOR IS RESPONSIBLE FOR A NUMBER OF
11:25AM 2 THINGS WITHIN THE LAB, INCLUDING THE QUALITY OF THE RESULTS?

11:25AM 3 A. YES.

11:25AM 4 Q. TO DO THAT JOB, DOES A LAB DIRECTOR NEED TO HAVE AUTONOMY
11:25AM 5 AND AUTHORITY?

11:25AM 6 MR. CAZARES: OBJECTION. CALLS FOR SPECULATION.
11:25AM 7 FOUNDATION.

11:25AM 8 MR. BOSTIC: I'M ASKING HIM ABOUT HIS JOB,
11:25AM 9 YOUR HONOR.

11:25AM 10 THE COURT: OVERRULED.

11:25AM 11 THE WITNESS: YOU KNOW, A LAB DIRECTOR NEEDS TO HAVE
11:25AM 12 THE AUTHORITY TO MAKE A LOT OF DIFFERENT DECISIONS IN ORDER TO
11:25AM 13 PERFORM THAT JOB CORRECTLY.

11:25AM 14 BY MR. BOSTIC:

11:25AM 15 Q. AND AS LAB DIRECTOR AT THERANOS, DID MR. BALWANI AND
11:25AM 16 MS. HOLMES GIVE YOU THE LEVEL OF AUTHORITY THAT YOU NEEDED TO
11:26AM 17 ACT EFFECTIVELY AS A LAB DIRECTOR?

11:26AM 18 MR. CAZARES: OBJECTION. THE LAB DIRECTOR?
11:26AM 19 FOUNDATION, SPECULATION, AND ACTUALLY 403.

11:26AM 20 THE COURT: THIS IS RELATED TO HIS JOB?

11:26AM 21 MR. BOSTIC: YES, YOUR HONOR.

11:26AM 22 THE COURT: HIS OPINION OF HIS JOB?

11:26AM 23 MR. BOSTIC: YES, YOUR HONOR.

11:26AM 24 THE COURT: OVERRULED.

11:26AM 25 BY MR. BOSTIC:

11:26AM 1 Q. I'LL ASK YOU THE QUESTION AGAIN, DR. PANDORI, AND THAT
11:26AM 2 QUESTION IS -- FIRST OF ALL, CAN YOU REMIND US, WHAT WAS YOUR
11:26AM 3 JOB TITLE AND ROLE AT THERANOS?

11:26AM 4 A. THE JOB TITLE WAS LABORATORY DIRECTOR.
11:26AM 5 THE ROLE WAS MORE OF A LOGISTICAL ASSISTANT DIRECTOR.

11:26AM 6 Q. AND WE TALKED ABOUT WHAT THE REGULATIONS SAY ON PAPER
11:26AM 7 ABOUT THE LAB DIRECTOR ROLE; CORRECT?

11:26AM 8 A. WE TALKED ABOUT THAT.

11:26AM 9 Q. AND MY QUESTION NOW IS, DID MR. BALWANI AND MS. HOLMES
11:26AM 10 GIVE YOU AND DR. ROSENDORFF THE AUTHORITY AND POWER YOU NEEDED
11:26AM 11 IN THE COMPANY TO DO THAT JOB CORRECTLY?

11:26AM 12 MR. CAZARES: OBJECTION. 403, FOUNDATION, CALLS FOR
11:26AM 13 SPECULATION.

11:26AM 14 THE COURT: OVERRULED.

11:26AM 15 THE WITNESS: NOT IN MY OPINION.

11:27AM 16 BY MR. BOSTIC:

11:27AM 17 Q. AND WHY DO YOU SAY THAT?

11:27AM 18 A. BECAUSE CERTAIN THINGS THAT I FELT THAT WE NEEDED TO DO IN
11:27AM 19 FURTHERANCE OF PATIENT SAFETY AND QUALITY, I DIDN'T HAVE THE
11:27AM 20 AUTHORITY TO MAKE THOSE DECISIONS.

11:27AM 21 Q. AND ARE THOSE THE THINGS THAT WE HAVE BEEN DISCUSSING
11:27AM 22 THROUGHOUT YOUR TESTIMONY?

11:27AM 23 A. YES.

11:27AM 24 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

11:27AM 25 THE COURT: YES.

11:27AM 1 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

11:27AM 2 MR. BOSTIC: NO FURTHER QUESTIONS.

11:27AM 3 THANK YOU, DR. PANDORI.

11:27AM 4 YOU CAN TAKE THAT DOWN.

11:27AM 5 THE COURT: DO YOU HAVE RECROSS?

11:27AM 6 MR. CAZARES: I DO, YOUR HONOR.

11:27AM 7 THE COURT: ALL RIGHT. LET'S TAKE OUR BREAK, LADIES

11:27AM 8 AND GENTLEMEN, AND THEN WE'LL CONTINUE WITH DR. PANDORI.

11:27AM 9 THANK YOU.

11:27AM 10 (RECESS FROM 11:27 A.M. UNTIL 12:10 P.M.)

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12:10PM 1

AFTERNOON SESSION

12:10PM 2

(JURY IN AT 12:10 P.M.)

12:10PM 3

THE COURT: ALL COUNSEL ARE PRESENT.

12:10PM 4

THE JURY AND ALTERNATES ARE PRESENT.

12:11PM 5

DR. PANDORI IS BACK ON THE STAND.

12:11PM 6

YOU HAVE RECROSS?

12:11PM 7

MR. CAZARES: A LITTLE BIT, YOUR HONOR. THANK YOU.

12:11PM 8

THE COURT: ALL RIGHT.

12:11PM 9

RECROSS-EXAMINATION

12:11PM 10

BY MR. CAZARES:

12:11PM 11

Q. DR. PANDORI, YOU WERE ASKED ON REDIRECT ABOUT THE EMAIL

12:11PM 12

THAT IS REFLECTED IN EXHIBIT 20548, WHICH IS IN EVIDENCE.

12:11PM 13

CAN WE PUT THAT UP ON THE SCREEN.

12:11PM 14

A. I SEE IT.

12:11PM 15

Q. OKAY. AND YOU RECALL THE MESSAGE AT THE LOWER PORTION OF

12:11PM 16

THE EXHIBIT FROM DANIEL YOUNG, THAT'S DR. YOUNG, WHO YOU'RE

12:11PM 17

FAMILIAR WITH; CORRECT?

12:11PM 18

A. CORRECT.

12:11PM 19

Q. AND THAT'S FEBRUARY 20, 2014.

12:11PM 20

DO YOU SEE THE DATE?

12:11PM 21

A. I SEE IT.

12:11PM 22

Q. AND THEN THERE'S A LINK TO AN INTERNET "WIRED" ARTICLE AND

12:11PM 23

THE DOCUMENT REFLECTS ELIZABETH HOLMES - THERANOS.

12:12PM 24

DO YOU SEE THAT?

12:12PM 25

A. I DO.

12:12PM 1 Q. AND IT APPEARS SOMEONE FORWARDED THAT MESSAGE, A
12:12PM 2 SWAPNA JOSHI.
12:12PM 3 YOU KNOW WHO DR. JOSHI IS; CORRECT?
12:12PM 4 A. NO, I DON'T.
12:12PM 5 Q. SOMEONE THAT WORKED AT THERANOS?
12:12PM 6 A. IT APPEARS SO.
12:12PM 7 Q. AND THE MESSAGE WAS SENT TO YOU ON FEBRUARY 27TH, 2014.
12:12PM 8 DO YOU SEE THAT?
12:12PM 9 A. YES.
12:12PM 10 Q. AND EMBEDDED IN THAT MESSAGE IS THE LINK TO THE "WIRED"
12:12PM 11 ARTICLE.
12:12PM 12 DO YOU SEE THAT?
12:12PM 13 A. YES.
12:12PM 14 Q. AND YOU'RE AWARE OF THE FACT THAT "WIRED" ISSUES ITS
12:12PM 15 ARTICLES ONLINE BEFORE IT ACTUALLY MAKES AVAILABLE THE HARD
12:12PM 16 COPY MAGAZINES ON NEWS STANDS; CORRECT?
12:12PM 17 A. I'M NOT AWARE OF THAT FACT.
12:12PM 18 Q. YOU CAN TAKE THAT DOWN, MR. ALLEN.
12:12PM 19 YOU WERE ASKED SOME QUESTIONS BY MR. BOSTIC ON REDIRECT
12:12PM 20 RELATING TO, AGAIN, THE NEW YORK PROFICIENCY SAMPLE EXPERIMENT
12:13PM 21 THAT WAS DONE IN FEBRUARY OF 2014.
12:13PM 22 DO YOU RECALL THAT?
12:13PM 23 A. WAS IT A SPREADSHEET?
12:13PM 24 Q. THE SPREADSHEET AND THE EXPERIMENT UNDERLYING THE
12:13PM 25 EXPERIMENT.

12:13PM 1 DO YOU RECALL THAT?

12:13PM 2 A. OH, I RECALL THAT.

12:13PM 3 Q. AND THAT WAS IN FEBRUARY OF 2014; CORRECT?

12:13PM 4 A. I THINK SO. YOU'D HAVE TO SHOW ME THE DATE AGAIN.

12:13PM 5 Q. AND YOU TESTIFIED THAT YOU WERE THE PERSON WHO CAME UP
12:13PM 6 WITH THE IDEA TO DO THAT EXPERIMENT; CORRECT?

12:13PM 7 A. THAT'S MY UNDERSTANDING.

12:13PM 8 Q. AND AT THE TIME THAT YOU CAME UP WITH THAT IDEA, YOU WERE
12:13PM 9 UNAWARE OF THE FACT THAT DR. ROSENDORFF HAD ALREADY
12:13PM 10 IMPLEMENTED, VALIDATED, SIGNED OFF ON A STANDARD OPERATING
12:13PM 11 PROCEDURE TO PERFORM AAP ON THERANOS EDISON DEVICES; CORRECT?

12:13PM 12 MR. BOSTIC: OBJECTION. VAGUE. COMPOUND.

12:13PM 13 THE COURT: DID YOU UNDERSTAND THE QUESTION?

12:13PM 14 THE WITNESS: THERE WERE SEVERAL VERBS.

12:13PM 15 THE COURT: WHY DON'T YOU REPHRASE?

12:13PM 16 BY MR. CAZARES:

12:13PM 17 Q. AT THE TIME, AT THE TIME THAT YOU SUGGESTED THE EXPERIMENT
12:13PM 18 IN FEBRUARY OF 2014 WITH THE NEW YORK PROFICIENCY TESTING
12:13PM 19 SAMPLES, YOU WERE UNAWARE THAT DR. ROSENDORFF HAD ALREADY
12:13PM 20 SIGNED OFF AND APPROVED A STANDARD OPERATING PROCEDURE FOR AAP
12:14PM 21 ON EDISON DEVICES; CORRECT?

12:14PM 22 A. CORRECT.

12:14PM 23 Q. AND THAT EXPERIMENT THAT YOU PERFORMED WASN'T PERFORMED
12:14PM 24 CONSISTENT WITH THAT STANDARD OPERATING PROCEDURE THAT HAD
12:14PM 25 ALREADY BEEN AUTHORIZED AND APPROVED BY DR. ROSENDORFF;

12:14PM 1 CORRECT?

12:14PM 2 A. CORRECT.

12:14PM 3 Q. AND YOU ALSO AGREED, I THINK WITH MR. BOSTIC, DID YOU NOT,

12:14PM 4 THAT THE CLINICAL LABORATORY SHOULD BE OPERATED AND CONDUCTED

12:14PM 5 CONSISTENT WITH THE STANDARD OPERATING PROCEDURES THAT WERE

12:14PM 6 ALREADY AUTHORIZED AND SIGNED OFF ON BY THE CLINICAL LABORATORY

12:14PM 7 DIRECTOR; CORRECT?

12:14PM 8 A. DID YOU JUST SAY THAT JOHN BOSTIC ASKED ME THAT QUESTION?

12:14PM 9 Q. WHAT I'M ASKING YOU IS THAT YOU AGREE THAT THE LABORATORY

12:14PM 10 SHOULD BE OPERATED AND ITS EMPLOYEES SHOULD PERFORM TESTING

12:14PM 11 CONSISTENT WITH THE STANDARD OPERATING PROCEDURES THAT WERE

12:14PM 12 APPROVED BY THE CLIA LAB DIRECTOR; CORRECT?

12:15PM 13 A. IN A DIAGNOSTIC LABORATORY, THAT WOULD BE AN APPROPRIATE

12:15PM 14 COURSE OF ACTION AS LONG AS THOSE SOP'S HAVE BEEN APPROVED BY

12:15PM 15 THE LABORATORY DIRECTOR.

12:15PM 16 Q. AND ADAM ROSENDORFF WAS THE LABORATORY DIRECTOR DURING THE

12:15PM 17 TIME THAT YOU WORKED AT THERANOS; CORRECT?

12:15PM 18 A. CORRECT.

12:15PM 19 Q. IF WE COULD PLEASE PUBLISH EXHIBIT 7440. IT'S ALREADY IN

12:15PM 20 EVIDENCE.

12:15PM 21 AND, DR. PANDORI, LOOKING ON THE SCREEN, DO YOU SEE 7440

12:15PM 22 IS AN EMAIL THAT WE DISCUSSED EARLIER FROM YOURSELF TO

12:15PM 23 MR. BALWANI AND DR. ROSENDORFF?

12:15PM 24 DO YOU SEE THAT?

12:15PM 25 A. YES, I DO.

12:15PM 1 Q. AND THAT'S APRIL 17TH, 2014.

12:15PM 2 DO YOU SEE THAT?

12:15PM 3 A. YES.

12:15PM 4 Q. AND THIS IS SUBSEQUENT TO THAT EXPERIMENT USING THE

12:15PM 5 NEW YORK PROFICIENCY TESTING SAMPLES; CORRECT?

12:15PM 6 A. YES.

12:15PM 7 Q. AND IN THE MESSAGE YOU INDICATE, "ATTACHED, A SLIDE SHOW I

12:15PM 8 PUT TOGETHER GIVING AN OVERVIEW OF AAP AND HOW IT WORKS AND WHY

12:16PM 9 IT IS BETTER THAN PT."

12:16PM 10 DO YOU SEE THAT?

12:16PM 11 A. YES.

12:16PM 12 Q. AND THOSE ARE YOUR WORDS; CORRECT?

12:16PM 13 A. CORRECT.

12:16PM 14 Q. AND PT REFERS TO PROFICIENCY TESTING; CORRECT?

12:16PM 15 A. YES, IT DOES.

12:16PM 16 Q. AND IF WE CAN GO TO THE UNDERLYING POWERPOINT AT PAGE 6.

12:16PM 17 AND YOU PUT THE POWERPOINT TOGETHER; CORRECT?

12:16PM 18 A. THAT'S MY -- YES.

12:16PM 19 Q. AND INCLUDED IN THE POWERPOINT YOU PROVIDED TO MR. BALWANI

12:16PM 20 AND DR. ROSENDORFF, YOU WRITE, OR WROTE, IN THE PRESENTATION,

12:16PM 21 "THERANOS TESTS HAVE NO PEER GROUP."

12:16PM 22 CORRECT?

12:16PM 23 A. YES.

12:16PM 24 Q. AND YOU AGREED WITH THAT AT THE TIME; CORRECT?

12:16PM 25 A. IN APRIL OF '17, IT WAS CLEAR -- ON APRIL 17TH I THINK IS

12:17PM 1 WHEN THAT WAS DATED, THERE WAS NO TECHNICAL PEER.

12:17PM 2 Q. AND YOU ALSO WROTE IN THE PRESENTATION, "NORMAL PROCESS OF

12:17PM 3 PT IS THEREFORE NOT APPROPRIATE," EXCLAMATION POINT.

12:17PM 4 DO YOU SEE THAT?

12:17PM 5 A. YES.

12:17PM 6 Q. AND AGAIN, THIS IS YOUR PRESENTATION?

12:17PM 7 A. CORRECT.

12:17PM 8 Q. AND YOU AGREED WITH THAT AT THE TIME; CORRECT?

12:17PM 9 A. CORRECT.

12:17PM 10 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

12:17PM 11 THE COURT: MR. BOSTIC?

12:17PM 12 MR. BOSTIC: NOTHING FURTHER, YOUR HONOR.

12:17PM 13 THE COURT: MAY THIS WITNESS BE EXCUSED?

12:17PM 14 MR. CAZARES: YES, YOUR HONOR.

12:17PM 15 MR. BOSTIC: YES, YOUR HONOR.

12:17PM 16 THE COURT: YOU'RE EXCUSED, SIR. THANK YOU.

12:17PM 17 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

12:17PM 18 MR. SCHENK: YES, YOUR HONOR.

12:17PM 19 THE UNITED STATES CALLS CONSTANCE CULLEN.

12:18PM 20 THE COURT: GOOD MORNING. IF YOU WOULD JUST STAND

12:18PM 21 THERE AND RAISE YOUR RIGHT HAND WHILE YOU FACE OUR COURTROOM

12:18PM 22 DEPUTY, SHE HAS A QUESTION FOR YOU.

12:18PM 23 **(GOVERNMENT'S WITNESS, CONSTANCE CULLEN, WAS SWORN.)**

12:18PM 24 THE WITNESS: YES.

12:18PM 25 THE COURT: THANK YOU.

12:18PM 1 LET ME INVITE YOU TO HAVE A SEAT HERE IN THIS CHAIR. FEEL
12:18PM 2 FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED. I THINK
12:18PM 3 THERE'S SOME REFRESHMENT THERE FOR YOU SHOULD YOU LIKE IT.

12:18PM 4 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR
12:18PM 5 NAME AND THEN SPELL IT, PLEASE.

12:18PM 6 THE WITNESS: YES. MY NAME IS CONSTANCE CULLEN.
12:18PM 7 C-O-N-S-T-A-N-C-E, C-U-L-L-E-N.

12:19PM 8 THE COURT: THANK YOU. COUNSEL.

12:19PM 9 MR. SCHENK: THANK YOU, YOUR HONOR.

12:19PM 10 **DIRECT EXAMINATION**

12:19PM 11 BY MR. SCHENK:

12:19PM 12 Q. DR. CULLEN, IF YOU ARE FULLY VACCINATED, AND WITH THE
12:19PM 13 COURT'S PERMISSION, I UNDERSTAND THAT YOU MAY TESTIFY WITHOUT A
12:19PM 14 MASK.

12:19PM 15 A. YES.

12:19PM 16 THE COURT: YES. THANK YOU.

12:19PM 17 MR. SCHENK: AND I'LL DO THE SAME.

12:19PM 18 Q. DR. CULLEN, WAS THERE A TIME WHEN YOU WERE EMPLOYED BY A
12:19PM 19 COMPANY THAT WENT BY THE NAME OF SCHERING-PLOUGH?

12:19PM 20 A. YES, I WAS.

12:19PM 21 Q. AND HOW LONG DID YOU WORK AT SCHERING-PLOUGH?

12:19PM 22 A. I WORKED THERE FROM 1996 UNTIL 2016.

12:19PM 23 Q. AND WHILE YOU WERE WORKING AT SCHERING-PLOUGH, DID YOU
12:19PM 24 HAVE THE OPPORTUNITY TO BECOME FAMILIAR WITH ANOTHER COMPANY
12:19PM 25 CALLED THERANOS?

12:19PM 1 A. YES.

12:19PM 2 Q. DO YOU REMEMBER WHEN THAT WAS?

12:19PM 3 A. YES. IT WAS IN 2009.

12:19PM 4 Q. AND WHAT WORK WERE YOU DOING AT SCHERING-PLOUGH IN 2009?

12:19PM 5 A. I WAS LEADING A GROUP THAT WAS KNOWN AS THE BIOANALYTICAL

12:20PM 6 GROUP. SO THE GROUP WAS RESPONSIBLE FOR DEVELOPING THE ASSAYS

12:20PM 7 THAT ARE NEEDED TO TEST DRUGS AND THE RESPONSES TO DRUGS IN

12:20PM 8 EITHER ANIMAL STUDIES OR HUMAN STUDIES.

12:20PM 9 Q. OKAY. WE'LL COME BACK TO THAT WORK IN A MOMENT.

12:20PM 10 I'D LIKE TO HAVE YOU SUMMARIZE YOUR EDUCATIONAL BACKGROUND

12:20PM 11 FOR THE JURY.

12:20PM 12 A. YES. I HAVE A PH.D. IN MOLECULAR IMMUNOLOGY AND A

12:20PM 13 BACHELOR'S DEGREE IN MICROBIOLOGY.

12:20PM 14 Q. OKAY. AND WHEN YOU STARTED AT SCHERING-PLOUGH IN 1996,

12:20PM 15 WHAT TYPE OF WORK WERE YOU DOING?

12:20PM 16 A. IT WAS ESSENTIALLY THE SAME. I HAD BEEN PROMOTED A NUMBER

12:20PM 17 OF TIMES THROUGHOUT THE YEARS UNTIL I WAS ACTUALLY LEADING THE

12:20PM 18 GROUP, SO --

12:20PM 19 Q. AND WHEN YOU SAY "LEADING THE GROUP," WAS THAT IN 2009?

12:20PM 20 A. YES, IT WAS.

12:20PM 21 Q. OKAY. DO YOU RECALL YOUR TITLE IN 2009?

12:20PM 22 A. YES, DIRECTOR.

12:20PM 23 Q. AND WHAT TYPE OF WORK WAS SCHERING-PLOUGH GOING TO DO AT

12:21PM 24 THERANOS THAT LED YOU TO BECOME FAMILIAR WITH THAT COMPANY?

12:21PM 25 A. SO THERANOS WAS DEVELOPING ASSAYS TO MEASURE A VARIETY OF

12:21PM 1 DIFFERENT COMPONENTS IN HUMAN SERUM SAMPLES, OR BLOOD SAMPLES,
12:21PM 2 AND THAT MESHED VERY NICELY WITH THE WORK THAT WE WERE DOING IN
12:21PM 3 MY LAB.

12:21PM 4 Q. AND WHAT TYPE OF WORK WERE YOU DOING IN YOUR LAB?

12:21PM 5 A. WE WERE DESIGNING AND DEVELOPING THE ASSAYS TO MEASURE
12:21PM 6 DRUGS OR MARKERS OF EFFICACY OF THE DRUG IN PATIENT SAMPLES.

12:21PM 7 Q. AND WHAT DOES THAT MEAN, MARKERS OF THE EFFICACY OF THE
12:21PM 8 DRUG?

12:21PM 9 A. SO IF YOU'RE TESTING A DRUG, FOR EXAMPLE, THAT IS INTENDED
12:21PM 10 TO TREAT AN INFLAMMATORY AILMENT, THERE ARE WELL-KNOWN MARKERS
12:21PM 11 OF INFLAMMATION, AND YOU MEASURE THE CHANGE IN THOSE MARKERS AS
12:21PM 12 A RESULT OF A PATIENT BEING ADMINISTERED DRUG.

12:22PM 13 Q. AND WHY WAS MEASURING THOSE MARKERS SOMETHING THAT WAS
12:22PM 14 INTERESTING OR VALUABLE TO YOUR WORK AT SCHERING-PLOUGH?

12:22PM 15 A. BECAUSE IT PROVED THE EFFICACY OF THE DRUG, WHICH IS
12:22PM 16 REQUIRED AS PART OF OUR REGISTRATION OF THE DRUG WITH THE FOOD
12:22PM 17 AND DRUG ADMINISTRATION OR OTHER HEALTH AUTHORITIES.

12:22PM 18 Q. DO YOU REMEMBER HOW YOU FIRST BECAME FAMILIAR WITH
12:22PM 19 THERANOS?

12:22PM 20 A. MY BOSS HAD ASKED ME TO DO SOME WORK WITH THEM. THAT
12:22PM 21 WAS -- HE ACTUALLY HAD RECEIVED THE REQUEST FROM THE HEAD OF
12:22PM 22 OUR EARLY CLINICAL RESEARCH GROUP.

12:22PM 23 THE EARLY CLINICAL RESEARCH GROUP IS RESPONSIBLE FOR THOSE
12:22PM 24 VERY FIRST HUMAN STUDIES, AND SO THAT GROUP IN PARTICULAR HAS
12:22PM 25 AN INTEREST IN MEASURING THESE MARKERS OF DRUG EFFICACY.

12:22PM 1 Q. AM I FOLLOWING CORRECTLY, YOUR BOSS HEARD FROM SOMEBODY
12:22PM 2 ELSE THAT --
12:22PM 3 A. HIS COLLEAGUE, YES.
12:22PM 4 Q. AND WHAT IS YOUR BOSS'S NAME?
12:23PM 5 A. STEVE FARRAND.
12:23PM 6 Q. COULD YOU SPELL THE LAST NAME?
12:23PM 7 A. F-A-R-R-A-N-D.
12:23PM 8 Q. OKAY. AND IS IT DR., DR. FARRAND?
12:23PM 9 A. YES.
12:23PM 10 Q. AND DR. FARRAND LEARNED ABOUT THERANOS FROM ANOTHER
12:23PM 11 EMPLOYEE AT SCHERING-PLOUGH?
12:23PM 12 A. THAT'S RIGHT. THAT PERSON'S NAME IS JIM MCLEOD,
12:23PM 13 M-C-L-E-O-D.
12:23PM 14 Q. AND DR. MCLEOD MAKE THIS REFERRAL OR RECOMMENDATION TO
12:23PM 15 DR. FARRAND, WHO THEN BROUGHT YOU IN; IS THAT RIGHT?
12:23PM 16 A. THAT'S RIGHT.
12:23PM 17 Q. OKAY. DO YOU REMEMBER WHAT YOUR FIRST INTRODUCTION OR
12:23PM 18 INTERACTION WITH SOMEBODY AT THERANOS WAS?
12:23PM 19 A. I BELIEVE THAT I HAD EITHER A PHONE CALL OR AN EMAIL
12:23PM 20 CORRESPONDENCE, OR BOTH, WITH ELIZABETH HOLMES.
12:23PM 21 Q. AND WAS MS. HOLMES THE INDIVIDUAL WHO YOU FIRST
12:23PM 22 COMMUNICATED WITH AT THERANOS?
12:23PM 23 A. YES.
12:23PM 24 Q. THANK YOU.
12:23PM 25 YOUR HONOR, MAY I APPROACH?

12:23PM 1 THE COURT: YES.

12:24PM 2 MR. SCHENK: (HANDING.)

12:24PM 3 Q. DR. CULLEN, I'VE HANDED YOU A BINDER OF DOCUMENTS, AND I'M
12:24PM 4 GOING TO ASK YOU TO TURN TO WHAT IS THE FIRST TAB IN THAT
12:24PM 5 BINDER. IT'S EXHIBIT 188.

12:24PM 6 DO YOU SEE THAT?

12:24PM 7 A. YES, I DO.

12:24PM 8 Q. AND I'LL ASK YOU TO LOOK AT IT, AND MY QUESTION IS, IS
12:24PM 9 THIS AN EMAIL EXCHANGE BETWEEN YOU AND MS. HOLMES AT THE
12:24PM 10 BEGINNING OF THIS RELATIONSHIP?

12:24PM 11 A. YES.

12:24PM 12 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 188.

12:24PM 13 MS. WALSH: NO OBJECTION.

12:24PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:24PM 15 (GOVERNMENT'S EXHIBIT 188 WAS RECEIVED IN EVIDENCE.)

12:24PM 16 BY MR. SCHENK:

12:24PM 17 Q. DR. CULLEN, IF WE LOOK AT THE VERY BOTTOM OF THE EMAIL IN
12:24PM 18 THE CHAIN, SO THE FIRST IN TIME, IT LOOKS LIKE MS. HOLMES WROTE
12:24PM 19 TO YOU AT THE END OF FEBRUARY 2009.

12:24PM 20 DO YOU SEE THAT?

12:24PM 21 A. YES, I DO.

12:24PM 22 Q. AND SHE REFERENCED A GOOD CALL WITH JIM MCLEOD -- IS THAT
12:25PM 23 THE INDIVIDUAL YOU MENTIONED A MOMENT AGO?

12:25PM 24 A. THAT'S CORRECT.

12:25PM 25 Q. -- AND IS LOOKING FOR A TIME TO FOLLOW UP WITH YOU,

12:25PM 1 DR. CULLEN; IS THAT RIGHT?

12:25PM 2 A. THAT'S CORRECT.

12:25PM 3 Q. AND THEN AT THE VERY TOP OF THIS DOCUMENT, THE FIRST

12:25PM 4 EMAIL, THE BEGINNING OF MARCH 2009, MS. HOLMES WRITES AGAIN,

12:25PM 5 "TAKE A LOOK AT THE ATTACHED PER OUR CONVERSATION -- IF WE GO

12:25PM 6 DOWN THIS PATH, THERE ARE TWO SETS OF DOCUMENTS THAT WILL

12:25PM 7 COMPLIMENT THIS SUMMARY -- ONE IS THE DETAILED PROTOCOL FOR

12:25PM 8 RUNNING THESE EXPERIMENTS, THE OTHER IS THE CARTRIDGE INSERTS

12:25PM 9 THAT DETAIL PERFORMANCE SPECIFICATIONS."

12:25PM 10 DO YOU SEE THAT?

12:25PM 11 A. YES.

12:25PM 12 Q. IT LOOKS LIKE AT THE BEGINNING OF THAT EMAIL MS. HOLMES

12:25PM 13 SAYS, "TAKE A LOOK AT THE ATTACHED, IF WE GO DOWN THIS PATH."

12:25PM 14 WHAT DID YOU UNDERSTAND THAT TO BE A REFERENCE TO?

12:25PM 15 A. SO SCHERING-PLOUGH WAS CONSIDERING USING THERANOS TO

12:25PM 16 VALIDATE SOME ASSAYS FOR THEM WITH THEIR INSTRUMENTS.

12:25PM 17 Q. WHAT DOES THAT MEAN, SCHERING-PLOUGH WAS CONSIDERING USING

12:26PM 18 THERANOS TO VALIDATE ASSAYS?

12:26PM 19 A. SO THEY WOULD HAVE DONE THE WORK DEMONSTRATING THE UTILITY

12:26PM 20 OF THEIR INSTRUMENT FOR THE USE THAT SCHERING-PLOUGH HAD

12:26PM 21 INTENDED.

12:26PM 22 Q. WHEN YOU SAY "THEY," IS THAT THERANOS?

12:26PM 23 A. YES, THERANOS.

12:26PM 24 Q. SO DESCRIBE TO ME MORE PRECISELY, WHAT IS THE WORK THAT

12:26PM 25 THERANOS WOULD HAVE DONE?

12:26PM 1 A. SO IT'S REFERRED TO AS A VALIDATION. IT'S REQUIRED IN
12:26PM 2 ACCORDANCE WITH THE FDA GUIDANCE IN ORDER TO DEMONSTRATE THE
12:26PM 3 REPRODUCIBILITY OF ANY GIVEN ASSAY THAT YOU'RE GOING TO USE TO
12:26PM 4 SUPPORT SUBMISSION FOR YOUR DRUG.

12:26PM 5 Q. SO IF THIS WORK WAS DONE, YOU DESCRIBED SOME VALIDATION
12:26PM 6 WORK THAT THERANOS WOULD BE DOING. WHAT WOULD SCHERING-PLOUGH,
12:26PM 7 WHAT WOULD YOU OR YOUR LAB BE DOING?

12:26PM 8 A. IN THIS CASE WE WERE NOT DOING ANYTHING.

12:26PM 9 Q. OKAY. IF YOU'LL TURN NOW TO PAGE 2 OF THIS EXHIBIT, AND
12:27PM 10 THE REMAINING PAGE, I THINK IT GOES TO PAGE 3, COULD YOU LET
12:27PM 11 THE JURY KNOW WHAT THESE ARE, WHAT THE ATTACHMENTS ARE TO THIS
12:27PM 12 DOCUMENT?

12:27PM 13 A. YES. SO THIS IS A PROTOCOL FOR THE VALIDATION WORK THAT
12:27PM 14 I'VE JUST MENTIONED, AND A PROTOCOL IS A DOCUMENT THAT
12:27PM 15 DESCRIBES IN ADVANCE OF EXECUTING ANY LABORATORY WORK WHAT WORK
12:27PM 16 IS ACTUALLY TO BE DONE.

12:27PM 17 Q. SO WOULD THIS DOCUMENT HAVE LAID OUT SCHERING-PLOUGH AND
12:27PM 18 THERANOS'S UNDERSTANDING OF WHAT THE PROTOCOL WOULD INVOLVE?

12:27PM 19 A. THAT'S CORRECT.

12:27PM 20 Q. AND UNDER THE FIRST LINE OF THE DOCUMENT, DO YOU SEE THE
12:27PM 21 LETTERS HS IN PARENTHESES, AND THEN CRP, IL-6, AND TNF-A
12:27PM 22 MULTIPLEX?

12:27PM 23 A. YES.

12:27PM 24 Q. AND COULD YOU TELL THE JURY WHAT THAT IS?

12:27PM 25 A. YES. THESE ARE THREE MARKERS OF INFLAMMATION. SO CRP

12:28PM 1 STANDS FOR C REACTIVE PROTEIN; IL-6 STANDS FOR INTERLEUKIN 6;
12:28PM 2 AND TNF-A STANDS FOR TUMOR NECROSIS FACTOR ALPHA.

12:28PM 3 Q. AND THEN THE WORD MULTIPLEX, WHAT DOES THAT MEAN IN THIS
12:28PM 4 CONTEXT?

12:28PM 5 A. SO MULTIPLEX IS A WAY OF MEASURING ALL THREE OF THESE
12:28PM 6 ANALYTES SIMULTANEOUSLY AS OPPOSED TO MEASURING THEM
12:28PM 7 INDIVIDUALLY.

12:28PM 8 Q. I SEE. AND IS ANOTHER WORD FOR THESE THREE ANALYTES
12:28PM 9 ASSAYS?

12:28PM 10 A. YES, ONE COULD USE THAT WORD TO DESCRIBE THEM.

12:28PM 11 Q. AND THEN IF YOU'LL TURN TO THE FINAL PAGE IN THIS, WHICH
12:28PM 12 IS PAGE 3. THERE'S A SECTION TITLED ESTIMATED SCHEDULE.

12:28PM 13 DO YOU SEE THAT?

12:29PM 14 A. YES.

12:29PM 15 Q. AND IT LOOKS LIKE THERE'S A LINE THAT BEGINS "TOTAL NUMBER
12:29PM 16 OF CARTRIDGES PROVIDED WILL BE 2,790 OF THE TNF-ALPHA, IL-6,
12:29PM 17 CRP MULTIPLEX. UP TO 10 ADDITIONAL INSTRUMENTS WILL BE
12:29PM 18 SHIPPED. THE TOTAL EXPECTED RUNTIME IS AROUND 1 MONTH. THE
12:29PM 19 TOTAL HUMAN CAPITAL COMMITMENT WILL ONLY BE 5 DAYS OVER THE
12:29PM 20 ENTIRE PROGRAM DURATION AS IT ONLY TAKES UP TO 10 MINUTES TO
12:29PM 21 PREPARE AND LOAD A SAMPLE ON A SINGLE INSTRUMENT AFTER WHICH
12:29PM 22 THE INSTRUMENTS RUN ON THEIR OWN."

12:29PM 23 DO YOU SEE THAT?

12:29PM 24 A. I DO SEE THAT.

12:29PM 25 Q. SO WHAT IS -- CAN YOU DESCRIBE FOR THE JURY, WHAT DOES

12:29PM 1 THAT MEAN? WHAT IS ACTUALLY OCCURRING DURING THE SCHEDULE?

12:29PM 2 A. SO THE CARTRIDGES ARE THE INSERTS OR THE DISPOSABLE

12:30PM 3 PRODUCTS THAT ARE REQUIRED TO BE INSERTED INTO THE THERANOS

12:30PM 4 INSTRUMENT IN ORDER TO GENERATE A RESULT.

12:30PM 5 IN THIS CASE THOSE CARTRIDGES WERE DESIGNED TO BE ABLE TO

12:30PM 6 MEASURE ALL THREE, TNF-ALPHA, INTERLEUKIN-6, AND CRP

12:30PM 7 SIMULTANEOUSLY.

12:30PM 8 SORRY. DO YOU HAVE OTHER QUESTIONS ABOUT THE SECTION THAT

12:30PM 9 YOU WANT ME TO DESCRIBE?

12:30PM 10 Q. YES. HOW ABOUT THE RUNTIME?

12:30PM 11 A. OKAY. SO THE RUNTIME PRESUMABLY IS THE AMOUNT OF TIME

12:30PM 12 THAT IT WOULD TAKE FROM THE INITIATION OF THE PROTOCOL TO THE

12:30PM 13 COMPLETION OF THE PROTOCOL, WHICH USUALLY REQUIRES A REPORT.

12:30PM 14 Q. OKAY. AND HOW LONG WOULD THE INITIATION OF THE PROTOCOL

12:30PM 15 TO THE END, INCLUDING THE REPORT, TAKE ON THIS SCHEDULE?

12:30PM 16 A. IT LOOKS LIKE THEY'RE INDICATING IT WOULD TAKE ONE MONTH.

12:31PM 17 Q. OKAY. IF YOU'LL NOW TURN TO EXHIBIT 200.

12:31PM 18 DO YOU RECOGNIZE EXHIBIT 200?

12:31PM 19 A. I HAVE SEEN IT PREVIOUSLY, YES.

12:31PM 20 Q. OKAY. IS THIS AN AGREEMENT, A SERVICES AGREEMENT BETWEEN

12:31PM 21 SCHERING-PLOUGH AND THERANOS INVOLVING THE PROTOCOL OR THE

12:31PM 22 PROJECT THAT WE HAVE BEEN DISCUSSING?

12:31PM 23 A. YES.

12:31PM 24 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 200.

12:31PM 25 MS. WALSH: NO OBJECTION.

12:31PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:31PM 2 (GOVERNMENT'S EXHIBIT 200 WAS RECEIVED IN EVIDENCE.)

12:31PM 3 BY MR. SCHENK:

12:31PM 4 Q. DR. CULLEN, IN THE FIRST PARAGRAPH, THE AGREEMENT

12:31PM 5 REFERENCES A SERVICES AGREEMENT BETWEEN SCHERING CORPORATION IN

12:31PM 6 NEW JERSEY AND THERANOS IN CALIFORNIA.

12:31PM 7 DO YOU SEE THAT?

12:31PM 8 A. YES.

12:31PM 9 Q. AND WHERE WERE YOU AND YOUR LAB WHILE THIS PROTOCOL WAS

12:32PM 10 BEING RUN?

12:32PM 11 A. I WAS IN NEW JERSEY.

12:32PM 12 Q. OKAY. AND HOW ABOUT THERANOS?

12:32PM 13 A. THERANOS WAS IN CALIFORNIA.

12:32PM 14 Q. OKAY. IF WE CAN NOW GO DOWN TO THE TERM THAT IS IN

12:32PM 15 PARAGRAPH NUMBERED 2. IT LOOKS LIKE THE ANTICIPATED START DATE

12:32PM 16 WAS APRIL 15, 2009.

12:32PM 17 DO YOU SEE THAT?

12:32PM 18 A. YES.

12:32PM 19 Q. AND IT WOULD BE COMPLETED MAY 1ST, 2009?

12:32PM 20 A. YES.

12:32PM 21 Q. AND THEN LET'S LOOK AT THE PAYMENT TERMS. THAT'S THE LAST

12:32PM 22 PARAGRAPH ON THIS PAGE, PARAGRAPH 4, SPRI.

12:32PM 23 WHAT IS SPRI?

12:32PM 24 A. THAT STANDS FOR SCHERING-PLOUGH RESEARCH INSTITUTE, WHICH

12:32PM 25 IS A DIVISION THAT WAS WITHIN SCHERING CORPORATION.

12:32PM 1 Q. "SPRI WILL PAY PROVIDER A ONE TIME PAYMENT OF \$279,000 FOR
12:32PM 2 THE PROJECT."

12:32PM 3 WHO IS THE PROVIDER?

12:32PM 4 A. THERANOS IS THE PROVIDER.

12:32PM 5 Q. WAS THAT THE TOTAL DOLLAR AMOUNT FOR THIS CONTRACT, THE
12:33PM 6 TOTAL DOLLAR AMOUNT THAT SCHERING WAS GOING TO PAY THERANOS?

12:33PM 7 A. AS FAR AS I KNOW.

12:33PM 8 Q. COULD YOU NOW TURN TO TAB 201.

12:33PM 9 DO YOU RECOGNIZE THE EXHIBIT AT EXHIBIT NUMBER 201?

12:33PM 10 A. NOT REALLY, NO.

12:33PM 11 Q. IF YOU'LL TURN TO THE SECOND PAGE.

12:33PM 12 ON THE SECOND PAGE, DO YOU SEE AN EMAIL FROM MS. HOLMES TO
12:33PM 13 YOU?

12:33PM 14 A. YES.

12:33PM 15 Q. AND WAS THAT SENT IN ABOUT APRIL OF 2009?

12:33PM 16 A. YES.

12:33PM 17 Q. AND THEN IF WE GO AND LOOK AT THE FIRST PAGE, DOES IT
12:33PM 18 APPEAR THAT THAT COMMUNICATION WAS FORWARDED WITHIN THERANOS?

12:33PM 19 A. YES, IT DOES.

12:33PM 20 Q. AND IF YOU'LL LOOK AT PAGE 3 AND THE FOLLOWING PAGES WOULD
12:34PM 21 APPEAR TO BE ATTACHED.

12:34PM 22 DO YOU RECOGNIZE THOSE AS AN INVOICE AND ALSO ANOTHER COPY
12:34PM 23 OF THE PROTOCOL?

12:34PM 24 A. YES TO BOTH, INVOICE AND PROTOCOL, I SEE THEM.

12:34PM 25 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 201.

12:34PM 1 MS. WALSH: NO OBJECTION.

12:34PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:34PM 3 (GOVERNMENT'S EXHIBIT 201 WAS RECEIVED IN EVIDENCE.)

12:34PM 4 BY MR. SCHENK:

12:34PM 5 Q. IF WE CAN START WITH THE EMAIL ON PAGE 2 FROM MS. HOLMES

12:34PM 6 TO YOU.

12:34PM 7 DO YOU SEE WHERE MS. HOLMES WRITES, "IN FOLLOW UP TO OUR

12:34PM 8 DISCUSSIONS WITH CONNIE, WE HAVE CEMENTED A COMPREHENSIVE

12:34PM 9 VALIDATION PROGRAM ON ONE OF OUR MULTIPLEXED CYTOKINE PANELS.

12:34PM 10 I HAVE ATTACHED THE INVOICE AND PROGRAM OVERVIEW TO THIS EMAIL.

12:35PM 11 THIS INVOICE SHOULD WORK IN LIEU OF A CONTRACT AS THIS ANALYSIS

12:35PM 12 WILL BE DONE AT THERANOS AND THE SCOPE IS RESTRICTED TO

12:35PM 13 VALIDATION."

12:35PM 14 DO YOU SEE THAT?

12:35PM 15 A. YES.

12:35PM 16 Q. AND THEN IN THE NEXT PARAGRAPH, MS. HOLMES CONTINUES, "WE

12:35PM 17 DID OF COURSE WORK THROUGH THE VALIDATION PROGRAM WITH CONNIE

12:35PM 18 IN GREAT DETAIL. WE WILL PRESENT THE RESULTS OF THE VALIDATION

12:35PM 19 BY YOUR VISIT IN MAY."

12:35PM 20 FIRST, DID YOU WORK THROUGH THIS VALIDATION WITH FOLKS AT

12:35PM 21 THERANOS OR MS. HOLMES?

12:35PM 22 A. THAT WOULD HAVE BEEN THE PROTOCOL THAT YOU SHOWED EARLIER.

12:35PM 23 Q. OKAY. YOU HAD A ROLE IN --

12:35PM 24 A. REVIEWING.

12:35PM 25 Q. REVIEWING -- OKAY.

12:35PM 1 A. CORRECT.

12:35PM 2 Q. AND THEN MS. HOLMES SAYS THERE'S A REFERENCE TO YOUR VISIT

12:35PM 3 IN MAY.

12:35PM 4 WHAT IS THAT A REFERENCE TO?

12:35PM 5 A. SO SCHERING-PLOUGH SENT A DUE DILIGENCE TEAM TO THERANOS

12:35PM 6 IN MAY OF 2009.

12:35PM 7 Q. OKAY. AND WHAT IS A DUE DILIGENCE TEAM?

12:35PM 8 A. SO IT'S A GROUP OF PEOPLE WITHIN THE COMPANY FROM

12:35PM 9 DIFFERENT DISCIPLINES THAT ARE SENT TO DO AN EVALUATION OF A

12:36PM 10 COMPANY IN ORDER TO VERIFY THAT THEY WOULD BE APPROPRIATE TO

12:36PM 11 WORK WITH AND COULD MEET THE, EXCUSE ME, THE NEEDS OF SCHERING

12:36PM 12 WITH RESPECT TO COMPLIANCE AND FINANCIALS, ET CETERA.

12:36PM 13 Q. OKAY. WE'LL COME BACK TO THAT MEETING IN JUST A MOMENT.

12:36PM 14 WOULD YOU TURN TO PAGE 3.

12:36PM 15 ON PAGE 3, I'M JUST WONDERING IF THE DOLLAR AMOUNT CHANGED

12:36PM 16 OR IF THERANOS IS INVOICING SCHERING-PLOUGH FOR THAT SAME

12:36PM 17 DOLLAR AMOUNT THAT WE DISCUSSED EARLIER.

12:36PM 18 A. THAT'S THE SAME DOLLAR AMOUNT.

12:36PM 19 Q. AND WHAT IS THE AMOUNT?

12:36PM 20 A. \$279,000.

12:36PM 21 Q. AND IF YOU'LL TURN TO PAGE 6 OF THIS EXHIBIT.

12:36PM 22 PAGE 6 INCLUDES AN ESTIMATED SCHEDULE.

12:36PM 23 DID THE SCHEDULE CHANGE, OR ARE WE STILL LOOKING AT ABOUT

12:36PM 24 A ONE MONTH ESTIMATE?

12:37PM 25 A. THE SCHEDULE IS THE SAME.

12:37PM 1 Q. ALL RIGHT. IF YOU'LL NOW TURN TO TAB 192 IN YOUR BINDER.

12:37PM 2 IS 192 A MEETING REMINDER FOR THE MEETING IN CALIFORNIA IN

12:37PM 3 PALO ALTO THAT YOU WERE JUST TALKING ABOUT, AND ALSO AN AGENDA?

12:37PM 4 A. THAT'S RIGHT.

12:37PM 5 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 192.

12:37PM 6 MS. WALSH: NO OBJECTION.

12:37PM 7 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:37PM 8 (GOVERNMENT'S EXHIBIT 192 WAS RECEIVED IN EVIDENCE.)

12:37PM 9 BY MR. SCHENK:

12:37PM 10 Q. THE MEETING START DATE LOOKS LIKE IT'S MAY 5TH, 2009.

12:37PM 11 DOES THAT SOUND ROUGHLY CORRECT TO YOU?

12:37PM 12 A. YES.

12:37PM 13 Q. AND UNDER PARTICIPANTS, THERE'S SOME INDIVIDUALS LISTED

12:37PM 14 FROM -- IT LOOKS LIKE FROM SCHERING-PLOUGH.

12:37PM 15 DO YOU SEE YOUR NAME LISTED THERE?

12:37PM 16 A. YES, I DO.

12:37PM 17 Q. DID YOU, IN FACT, ATTEND THIS MEETING?

12:37PM 18 A. YES, I DID.

12:38PM 19 Q. WAS MS. HOLMES PRESENT?

12:38PM 20 A. YES, SHE WAS.

12:38PM 21 Q. WAS MR. BALWANI PRESENT? DO YOU KNOW THAT NAME?

12:38PM 22 A. I DID NOT KNOW THE NAME, AND I DO NOT RECALL IF THAT

12:38PM 23 PERSON WAS PRESENT.

12:38PM 24 Q. OKAY. IT'S POSSIBLE THAT YOU HAVE NEVER MET SOMEONE NAMED

12:38PM 25 MR. BALWANI?

12:38PM 1 A. CORRECT.

12:38PM 2 Q. OKAY. IF YOU'LL NOW TURN TO THE SECOND PAGE, THE AGENDA,

12:38PM 3 DO YOU RECALL WHAT WAS DISCUSSED DURING THIS -- YOU CALLED IT A

12:38PM 4 DUE DILIGENCE MEETING?

12:38PM 5 A. YES, I DO.

12:38PM 6 Q. TELL THE JURY WHAT TOPICS WERE COVERED.

12:38PM 7 A. SO WE WERE DISCUSSING THE TECHNOLOGY PREDOMINANTLY, WHAT

12:38PM 8 THE CAPABILITIES WERE, WHAT SORTS OF TESTS COULD BE DEVELOPED

12:38PM 9 ON THE PLATFORM.

12:38PM 10 Q. AND DID YOU ASK QUESTIONS DURING THE MEETING?

12:38PM 11 A. I DID.

12:38PM 12 Q. AND WHO DID YOU DIRECT YOUR QUESTIONS TO?

12:38PM 13 A. INITIALLY I DIRECTED MY QUESTIONS TO ELIZABETH HOLMES, AND

12:38PM 14 THEN SUBSEQUENTLY I DIRECTED THEM TO OTHER THERANOS EMPLOYEES

12:39PM 15 WHO WERE PARTICIPATING IN THE MEETING.

12:39PM 16 Q. YOU SAID SUBSEQUENTLY YOU DIRECTED THEM TO OTHERS. WHY

12:39PM 17 THE CHANGE? WHY DID YOU START WITH MS. HOLMES AND THEN DIRECT

12:39PM 18 QUESTIONS TO OTHERS?

12:39PM 19 A. I FELT AS THOUGH MS. HOLMES WAS NOT ANSWERING THE

12:39PM 20 QUESTIONS ADEQUATELY OR DIRECTLY, AND I WANTED TO SEE IF I

12:39PM 21 COULD GET MORE DIRECT ANSWERS FROM OTHER PARTICIPANTS FROM

12:39PM 22 THERANOS.

12:39PM 23 Q. WHAT MAKES YOU SAY THAT? WHY DO YOU SAY THAT YOU DIDN'T

12:39PM 24 THINK THAT MS. HOLMES WAS ANSWERING THEM ADEQUATELY?

12:39PM 25 A. SO DURING THESE DUE DILIGENCE MEETINGS, THERE IS THE

12:39PM 1 EXPECTATION THAT A CERTAIN LEVEL OF TECHNICAL DETAIL WILL BE
12:39PM 2 DISCLOSED. THAT'S IMPORTANT FOR SCHERING-PLOUGH IN THIS CASE
12:39PM 3 BECAUSE THAT'S THE WAY THAT WE EVALUATE WHETHER OR NOT THIS
12:39PM 4 INSTRUMENT COULD BE USED TO SUPPORT DRUG SUBMISSIONS TO THE FDA
12:40PM 5 OR OTHER HEALTH AUTHORITIES.

12:40PM 6 SO IT'S INCUMBENT UPON US TO HAVE A GOOD UNDERSTANDING OF
12:40PM 7 HOW THE INSTRUMENT WORKS.

12:40PM 8 AND WE WERE NOT ABLE TO GET THAT LEVEL OF DISCLOSURE OR
12:40PM 9 UNDERSTANDING THROUGH THE QUESTIONS WITH MS. HOLMES.

12:40PM 10 Q. HOW ABOUT WHEN YOU PIVOTED AND STARTED ASKING QUESTIONS OF
12:40PM 11 OTHER PARTICIPANTS?

12:40PM 12 A. NO.

12:40PM 13 Q. DID YOU RECEIVE --

12:40PM 14 A. NO. AND THE REASON FOR THAT WAS AT EACH ATTEMPT TO ASK
12:40PM 15 OTHER INDIVIDUALS, MS. HOLMES INTERJECTED THE RESPONSE ON THEIR
12:40PM 16 BEHALF.

12:40PM 17 Q. SO YOU DIDN'T GET RESPONSES FROM OTHER INDIVIDUALS EVEN
12:40PM 18 WHEN YOU DIRECTED A QUESTION AT THEM?

12:40PM 19 A. THAT'S CORRECT.

12:40PM 20 Q. DID YOU SAY TO MS. HOLMES DURING THIS MEETING THAT YOU
12:40PM 21 FELT THE ANSWERS WERE INSUFFICIENT OR INADEQUATE?

12:40PM 22 A. NO.

12:40PM 23 Q. WHY NOT?

12:40PM 24 A. IT SEEMED APPARENT TO ME, I GUESS, AND IT'S AWKWARD.

12:41PM 25 Q. OKAY. WOULD YOU NOW TURN TO TAB 223.

12:41PM 1 A. I THINK MY BINDER IS EMPTY AT 223.

12:41PM 2 Q. YOUR BINDER IS EMPTY AT 223?

12:41PM 3 A. YES.

12:41PM 4 Q. LET ME GIVE YOU MY COPY.

12:41PM 5 MAY I APPROACH?

12:41PM 6 THE COURT: YES.

12:41PM 7 MR. SCHENK: (HANDING.)

12:41PM 8 Q. DR. CULLEN, DO YOU RECOGNIZE THE DOCUMENT AT 223 AS AN

12:41PM 9 EMAIL FROM YOU TO SOMEONE AT THERANOS NAMED GARY FRENZEL?

12:41PM 10 A. YES.

12:41PM 11 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 223.

12:41PM 12 MS. WALSH: NO OBJECTION.

12:42PM 13 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:42PM 14 (GOVERNMENT'S EXHIBIT 223 WAS RECEIVED IN EVIDENCE.)

12:42PM 15 BY MR. SCHENK:

12:42PM 16 Q. AND IF WE CAN START AT THE BOTTOM OF THIS EMAIL.

12:42PM 17 THIS EMAIL WAS SENT IN JUNE OF 2009.

12:42PM 18 DO YOU SEE THAT?

12:42PM 19 A. YES.

12:42PM 20 Q. SO WOULD THAT HAVE BEEN ABOUT A MONTH OR A MONTH AND A

12:42PM 21 HALF AFTER YOUR MEETING IN PALO ALTO?

12:42PM 22 A. THAT'S CORRECT.

12:42PM 23 Q. AND IN THE EMAIL YOU ASK ABOUT AN UPDATE ON THE ASSAY

12:42PM 24 DEVELOPMENT.

12:42PM 25 DO YOU SEE THAT?

12:42PM 1 A. YES.

12:42PM 2 Q. AND WHAT WERE YOU LOOKING FOR?

12:42PM 3 A. SO I WAS LOOKING FOR DATA ASSOCIATED WITH THE PROTOCOL

12:42PM 4 THAT WE DISCUSSED EARLIER.

12:42PM 5 Q. AND WHAT FORM WOULD THAT DATA HAVE TAKEN? WHAT --

12:42PM 6 A. IT WOULD HAVE BEEN PRESENTED IN A REPORT.

12:42PM 7 Q. OKAY. SO YOU WANTED A REPORT, BUT HAD NOT RECEIVED IT

12:42PM 8 YET?

12:42PM 9 A. THAT'S CORRECT.

12:42PM 10 Q. OKAY. YOU TOLD US THAT YOU FOUND THE ANSWERS FROM

12:42PM 11 MS. HOLMES INADEQUATE OR LESS THAN FORTHCOMING.

12:42PM 12 WHY THEN WERE YOU STILL ASKING FOR A DATA REPORT?

12:42PM 13 A. I THINK BECAUSE WE CONSIDERED IT TO BE AN OUTSTANDING

12:43PM 14 ITEM. WE HAD PAID FOR THE WORK AND WANTED TO HAVE CLOSURE.

12:43PM 15 Q. OKAY. SCHERING-PLOUGH HAD PAID ABOUT \$280,000 FOR THIS

12:43PM 16 WORK?

12:43PM 17 A. THAT'S CORRECT.

12:43PM 18 Q. AND PART OF WHAT THERANOS AGREED TO PROVIDE WAS A REPORT?

12:43PM 19 A. THAT'S RIGHT.

12:43PM 20 Q. IF YOU WILL NOW TURN TO PAGE 2 -- I'M SORRY, EXHIBIT 259.

12:43PM 21 DOES EXHIBIT 259 INCLUDE AN EMAIL NOW FROM GARY FRENZEL TO

12:43PM 22 YOU AND THEN A REPORT ATTACHED?

12:43PM 23 A. YES.

12:43PM 24 MR. SCHENK: YOUR HONOR, THE GOVERNMENT --

12:43PM 25 THE WITNESS: SO DATED DECEMBER 3RD, 2009.

12:43PM 1 BY MR. SCHENK:

12:43PM 2 Q. YES, FROM MR. FRENZEL, DECEMBER OF 2009?

12:43PM 3 A. YES, I HAVE THAT.

12:44PM 4 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS

12:44PM 5 EXHIBIT 259, INCLUDING THE ATTACHMENT.

12:44PM 6 MS. WALSH: NO OBJECTION TO 259.

12:44PM 7 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:44PM 8 (GOVERNMENT'S EXHIBIT 259 WAS RECEIVED IN EVIDENCE.)

12:44PM 9 BY MR. SCHENK:

12:44PM 10 Q. THANK YOU.

12:44PM 11 IF WE CAN LOOK AT THE EMAIL ON THE BOTTOM FROM

12:44PM 12 GARY FRENZEL, AND IT LOOKS LIKE FROM THE SIGNATURE HE'S THE VP

12:44PM 13 OF ASSAY SYSTEMS AT THERANOS.

12:44PM 14 DO YOU SEE THAT?

12:44PM 15 A. YES, I DO.

12:44PM 16 Q. AND HE WRITES, "HI CONNIE, I WAS ASKED TO SEND THIS REPORT

12:44PM 17 ON TO YOU, AND IF YOU CAN FORWARD TO THE PROPER PEOPLE. AFTER

12:44PM 18 YOU AND YOUR GROUP HAVE AN OPPORTUNITY TO GO THROUGH IT, LET US

12:44PM 19 KNOW IF YOU WOULD LIKE TO ARRANGE A PHONE CONFERENCE TO DISCUSS

12:44PM 20 THE RESULTS."

12:44PM 21 DR. CULLEN, IS THIS THE REPORT THAT YOU WERE TALKING ABOUT

12:44PM 22 IN JUNE OF 2009?

12:44PM 23 A. YES.

12:44PM 24 Q. AND YOU RECEIVED IT AT THE END OF THAT YEAR, IN DECEMBER

12:44PM 25 OF 2009?

12:44PM 1

A. YES.

12:44PM 2

Q. AND IF YOU TURN TO THE NEXT PAGE, IT'S ACTUALLY PAGE 3 OF THIS EXHIBIT, IS THIS WHERE THE REPORT BEGINS?

12:44PM 3

12:44PM 4

A. YES.

12:44PM 5

12:44PM 6

12:45PM 7

12:45PM 8

MR. SCHENK: YOUR HONOR, I HAVE SOME QUESTIONS ABOUT THIS DOCUMENT, AND WITH A PENDING MOTION, I JUST WANT TO MAKE SURE THAT THE COURT HAS AN OPPORTUNITY TO PROVIDE GUIDANCE IF IT CHOOSES TO.

12:45PM 9

12:45PM 10

THE COURT: WELL, I THINK WE'LL PROCEED BY QUESTION AND OBJECTIONS IF THERE ARE ANY.

12:45PM 11

MR. SCHENK: THANK YOU.

12:45PM 12

12:45PM 13

12:45PM 14

Q. AT THE VERY TOP OF THIS DOCUMENT, DR. CULLEN, ABOVE WHERE IT SAYS THERANOS MULTIPLEXED ASSAY PANEL VALIDATION REPORT, DO YOU SEE A LOGO AT THE VERY TOP ON THE LEFT?

12:45PM 15

A. YES.

12:45PM 16

MS. WALSH: OBJECTION.

12:45PM 17

THE COURT: OVERRULED.

12:45PM 18

BY MR. SCHENK:

12:45PM 19

Q. YOU CAN ANSWER THE QUESTION.

12:45PM 20

A. YES, I DO SEE THE LOGO.

12:45PM 21

Q. OKAY. AND WHOSE LOGO IS THAT?

12:45PM 22

A. IT'S THERANOS'S LOGOS.

12:45PM 23

12:45PM 24

Q. DR. CULLEN -- WELL, FIRST OF ALL, ON WHICH SIDE OF THE DOCUMENT IS THE THERANOS LOGO?

12:45PM 25

A. IT'S ON THE LEFT.

12:45PM 1 Q. ON THE RIGHT SIDE OF THE DOCUMENT ACROSS FROM THE THERANOS
12:45PM 2 LOGO, DO YOU SEE ANY OTHER LOGOS?
12:45PM 3 A. NO.
12:45PM 4 Q. IF YOU COULD NOW TURN TO PAGE 5.
12:46PM 5 ON PAGE 5 OF THIS EXHIBIT, IT LOOKS LIKE THERE ARE THREE
12:46PM 6 GRAPHS.
12:46PM 7 DO YOU SEE THAT?
12:46PM 8 A. YES.
12:46PM 9 Q. AND WHOSE DATA IS THIS?
12:46PM 10 A. THIS IS THERANOS'S.
12:46PM 11 Q. AND DID SCHERING-PLOUGH GENERATE THIS DATA?
12:46PM 12 A. NO.
12:46PM 13 Q. WHO GENERATED THIS DATA?
12:46PM 14 A. THERANOS.
12:46PM 15 Q. IS THAT TRUE FOR THE ENTIRE CONTENT OF THIS DOCUMENT?
12:46PM 16 A. THAT'S MY UNDERSTANDING, YES.
12:46PM 17 Q. AND IF YOU'LL NOW TURN TO PAGE 19 OF THIS EXHIBIT, THERE'S
12:46PM 18 A SECTION CALLED CONCLUSIONS.
12:46PM 19 DO YOU SEE THAT?
12:46PM 20 A. I DO.
12:46PM 21 Q. AND WHOSE CONCLUSIONS WERE THESE?
12:46PM 22 A. THESE WOULD HAVE BEEN THERANOS'S CONCLUSIONS SINCE IT WAS
12:46PM 23 THEIR REPORT.
12:46PM 24 Q. WERE THESE YOUR CONCLUSIONS?
12:46PM 25 A. NO.

12:46PM 1 Q. WERE THESE THE CONCLUSIONS, TO YOUR KNOWLEDGE, OF ANYBODY

12:47PM 2 AT SCHERING-PLOUGH?

12:47PM 3 A. NO.

12:47PM 4 Q. THE FIRST SENTENCE IN THE CONCLUSIONS SECTION READS, "THE

12:47PM 5 THERANOS IL-6, TNF-A, CRP ASSAY MULTIPLEX HAS BEEN SHOWN TO

12:47PM 6 GIVE ACCURATE AND PRECISE RESULTS FOR THREE INDEPENDENTLY

12:47PM 7 CALIBRATED CARTRIDGE LOTS AND ALL THE MANY INSTRUMENTS USED."

12:47PM 8 DO YOU SEE THAT SENTENCE?

12:47PM 9 A. YES.

12:47PM 10 Q. WHEN THE CONCLUSION READS THAT THE ASSAY MULTIPLEX WAS

12:47PM 11 SHOWN TO GIVE ACCURATE AND PRECISE RESULTS, WAS THAT A

12:47PM 12 STATEMENT THAT SCHERING-PLOUGH WAS MAKING?

12:47PM 13 A. NO.

12:47PM 14 Q. DR. CULLEN, IF YOU WOULD NOW TURN TO TAB 262.

12:47PM 15 DO YOU SEE AN EMAIL EXCHANGE AGAIN IN DECEMBER OF 2009

12:48PM 16 BETWEEN GARY FRENZEL AND YOU?

12:48PM 17 A. YES.

12:48PM 18 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS

12:48PM 19 EXHIBIT 262.

12:48PM 20 MS. WALSH: NO OBJECTION.

12:48PM 21 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:48PM 22 (GOVERNMENT'S EXHIBIT 262 WAS RECEIVED IN EVIDENCE.)

12:48PM 23 BY MR. SCHENK:

12:48PM 24 Q. AT THE BOTTOM OF THIS FIRST PAGE, IT LOOKS LIKE

12:48PM 25 MR. FRENZEL WRITES TO YOU THAT HE WANTS TO MAKE SURE THAT YOU

12:48PM 1 RECEIVED THE REPORT.

12:48PM 2 DO YOU SEE THAT?

12:48PM 3 A. I DO.

12:48PM 4 Q. AND THEN YOU FOLLOW UP THAT YOU'RE SORRY FOR THE SLOW
12:48PM 5 RESPONSE, YOU DID RECEIVE THE REPORT, BUT YOU WANT TO DEFER
12:48PM 6 DISCUSSIONS UNTIL JANUARY, YOU'RE SWAMPED WITH A MERGER WITH
12:48PM 7 MERCK.

12:48PM 8 WHAT IS THAT A REFERENCE TO?

12:48PM 9 A. SO SCHERING-PLOUGH WAS ACQUIRED BY MERCK IN NOVEMBER OF
12:48PM 10 2009.

12:48PM 11 Q. AND HOW DID THAT AFFECT YOUR JOB?

12:48PM 12 A. MY JOB GOT MUCH BIGGER.

12:48PM 13 Q. OKAY. YOU RECEIVED THE VALIDATION REPORT, I THINK WE JUST
12:49PM 14 SAW, IN NOVEMBER; IS THAT RIGHT?

12:49PM 15 A. THAT'S RIGHT.

12:49PM 16 Q. AND DID YOU DO SOMETHING WITH THAT REPORT IN DECEMBER OF
12:49PM 17 2009?

12:49PM 18 A. NO, OTHER THAN READ IT.

12:49PM 19 Q. OKAY. AND IT LOOKS LIKE GARY FRENZEL IS ASKING YOU ABOUT
12:49PM 20 FURTHER DISCUSSIONS, AND YOU SAID YOU WANTED TO DEFER THEM
12:49PM 21 UNTIL JANUARY; IS THAT RIGHT?

12:49PM 22 A. THAT'S CORRECT.

12:49PM 23 Q. DID YOU, IN FACT, HAVE FOLLOW-UP DISCUSSIONS WITH
12:49PM 24 GARY FRENZEL OR ANYBODY AT THERANOS --

12:49PM 25 A. NO.

12:49PM 1 Q. -- IN JANUARY OF 2010?

12:49PM 2 A. NO.

12:49PM 3 Q. HOW ABOUT AT ANY POINT AFTER DECEMBER 2009?

12:49PM 4 A. NOT TO MY RECOLLECTION, NO.

12:49PM 5 Q. WHY NOT?

12:49PM 6 A. WE WEREN'T INTERESTED IN PURSUING THE TECHNOLOGY, AND

12:49PM 7 THERE WAS A LOT OF OTHER WORK THAT WAS HIGHER PRIORITY.

12:49PM 8 Q. OKAY. YOU SAID THAT YOU WERE NOT INTERESTED IN PURSUING

12:49PM 9 THE TECHNOLOGY. DO YOU MEAN THE THERANOS TECHNOLOGY?

12:50PM 10 A. I DO.

12:50PM 11 Q. AND WHY DO YOU SAY THAT? WHY WERE YOU, OR WHY WAS

12:50PM 12 SCHERING-PLOUGH NOT INTERESTED?

12:50PM 13 A. I THINK IT WAS A COMBINATION OF THE DUE DILIGENCE VISIT,

12:50PM 14 AS WELL AS THE RESULTS IN THE VALIDATION REPORT.

12:50PM 15 Q. OKAY. THANK YOU.

12:50PM 16 WOULD YOU NOW TURN TO TAB 291.

12:50PM 17 NOW, THE FIRST PAGE IN 291 CONTAINS TWO EMAILS. YOU'RE

12:50PM 18 NOT ON EITHER OF THE EMAILS; IS THAT RIGHT?

12:50PM 19 A. THAT'S CORRECT.

12:50PM 20 MR. SCHENK: YOUR HONOR, THE GOVERNMENT WILL OFFER

12:50PM 21 THE TOP EMAIL, THAT IS WEDNESDAY APRIL 14TH, 2010, AND THE

12:50PM 22 ATTACHMENTS, THE ATTACHMENTS ARE A TOTAL OF 55 PAGES, FOR A

12:51PM 23 NONHEARSAY PURPOSE.

12:51PM 24 THE COURT: ARE THESE -- IS THIS SUBJECT TO THE

12:51PM 25 STIPULATION?

12:51PM 1 MR. SCHENK: IT IS, BECAUSE THE BATES NUMBERS
12:51PM 2 DEMONSTRATE AUTHENTICITY.

12:51PM 3 MS. WALSH: OBJECTION, YOUR HONOR. THE BASIS FOR
12:51PM 4 THE OBJECTION IS OUR PENDING MOTION, 106, AND 403.

12:51PM 5 THE COURT: ALL RIGHT. THANK YOU.

12:51PM 6 AND, MR. SCHENK, YOU'RE ASKING THAT THE ATTACHMENTS BE
12:51PM 7 ADMITTED AS THEY APPEAR IN THIS EXHIBIT?

12:51PM 8 MR. SCHENK: YES, YOUR HONOR.

12:51PM 9 THE COURT: AND TELL ME AGAIN THE RELEVANCE AND THE
12:51PM 10 FOUNDATION FOR THESE COMING IN.

12:51PM 11 MR. SCHENK: YES, YOUR HONOR.

12:51PM 12 THE COURT: FOR WHAT PURPOSE?

12:51PM 13 MR. SCHENK: YES, YOUR HONOR.

12:51PM 14 THE EMAIL INCLUDES MR. BALWANI, THE DEFENDANT, ON THE CC
12:52PM 15 LINE. IT IS THEREFORE RELEVANT TO DEMONSTRATE THE DEFENDANT'S
12:52PM 16 STATE OF MIND AS TO TWO ISSUES, KNOWLEDGE AND INTENT; THAT IS,
12:52PM 17 WHAT IS DONE WITH THE ATTACHMENTS.

12:52PM 18 AND THE COURT SEES THREE UNDERLINED ATTACHMENTS IN THE
12:52PM 19 CAPTION OF THE EMAIL.

12:52PM 20 THE THIRD IS A VERSION OF THE DOCUMENT THAT WE HAVE JUST
12:52PM 21 DISCUSSED WITH DR. CULLEN, AND THE OTHERS MAY COME UP DURING
12:52PM 22 THE COURSE OF THE TRIAL.

12:52PM 23 THE COURT: SO THESE ARE NOT COMING IN FOR THE TRUTH
12:52PM 24 OF ANYTHING ASSERTED, BUT RATHER THAT THEY WERE RECEIVED AT
12:52PM 25 LEAST BY MR. BALWANI PER THE EMAIL ADDRESS?

12:52PM 1 MR. SCHENK: PRECISELY.

12:52PM 2 THE COURT: ALL RIGHT. FOR THAT LIMITED PURPOSE --
12:52PM 3 I'LL OVERRULE THE OBJECTION.

12:52PM 4 AND FOR THAT LIMITED PURPOSE, LADIES AND GENTLEMEN, THESE
12:52PM 5 ARE BEING ADMITTED, THIS EMAIL IS BEING ADMITTED FOR THE
12:52PM 6 LIMITED PURPOSE OF KNOWLEDGE, THAT IS, KNOWLEDGE AS TO THE
12:52PM 7 RECIPIENT OF THE EMAIL, AND FOR THAT LIMITED PURPOSE ONLY.

12:53PM 8 MR. SCHENK: THANK YOU. PERMISSION TO PUBLISH JUST
12:53PM 9 THE TOP EMAIL?

12:53PM 10 THE COURT: YES.

12:53PM 11 (GOVERNMENT'S EXHIBIT 291, TOP EMAIL AND ATTACHMENT, WAS
12:53PM 12 RECEIVED IN EVIDENCE.)

12:53PM 13 BY MR. SCHENK:

12:53PM 14 Q. DR. CULLEN, I'M SHOWING YOU AN EMAIL THAT SAYS FROM
12:53PM 15 ELIZABETH HOLMES IN THE CAPTION.

12:53PM 16 DO YOU SEE THAT?

12:53PM 17 A. I DO.

12:53PM 18 Q. AND IT'S TO SOMEONE THAT APPEARS TO BE ALEX.JUNG --
12:53PM 19 J-U-N-G -- @WALGREENS.COM.

12:53PM 20 DO YOU SEE THAT?

12:53PM 21 A. YES, I DO.

12:53PM 22 Q. AND THEN ON THE CC LINE SOMEONE NAMED JAY.ROSAN@WALGREENS,
12:53PM 23 AND THEN SUNNY BALWANI.

12:53PM 24 DO YOU SEE THAT?

12:53PM 25 A. I DO.

12:53PM 1 Q. AND IN THE EMAIL IT APPEARS THAT THERE ARE THREE
12:53PM 2 ATTACHMENTS. DO YOU SEE THE ATTACHMENTS LISTED UNDERLINED?
12:53PM 3 A. I DO.
12:53PM 4 Q. AND THEN IN THE BODY, THE FIRST PARAGRAPH READS, "DR. JAY,
12:53PM 5 ALEX,
12:53PM 6 "AS PER OUR DISCUSSION, PLEASE FIND THREE INDEPENDENT DUE
12:53PM 7 DILIGENCE REPORTS ON THERANOS SYSTEMS ATTACHED TO THIS EMAIL.
12:53PM 8 THESE REPORTS ARE FROM GLAXOSMITHKLINE, PFIZER, AND
12:54PM 9 SCHERING-PLOUGH AFTER THEIR OWN TECHNICAL VALIDATION AND
12:54PM 10 EXPERIENCE WITH THERANOS SYSTEMS IN THE FIELD. PLEASE NOTE
12:54PM 11 THAT THESE DOCUMENTS ARE STRICTLY CONFIDENTIAL UNDER OUR CDA."
12:54PM 12 DID I READ THAT CORRECTLY?
12:54PM 13 A. YES.
12:54PM 14 Q. DR. CULLEN, WOULD YOU NOW TURN TO PAGE 34 OF THIS EXHIBIT?
12:54PM 15 EARLIER IN YOUR TESTIMONY WE TALKED ABOUT AN OCCASION WHEN
12:54PM 16 YOU REACHED OUT TO THERANOS TO OBTAIN A REPORT.
12:54PM 17 DO YOU REMEMBER THAT?
12:54PM 18 A. YES.
12:54PM 19 Q. WAS THAT AN ASSAY DEVELOPMENT REPORT?
12:54PM 20 A. YES.
12:54PM 21 Q. AND WAS THAT A REPORT INVOLVING THE IL-6, THE TNF-ALPHA,
12:54PM 22 AND CRP ASSAYS?
12:55PM 23 A. THAT'S CORRECT.
12:55PM 24 Q. AND ARE WE NOW LOOKING AT A VERSION OF AN ASSAY
12:55PM 25 DEVELOPMENT REPORT INVOLVING THOSE ASSAYS?

12:55PM 1 A. YES.

12:55PM 2 Q. ON THIS PORTION OF THE REPORT, I'M GOING TO ASK YOU WHAT

12:55PM 3 LOGO YOU SEE AT THE VERY TOP ON THE LEFT.

12:55PM 4 MS. WALSH: OBJECTION.

12:55PM 5 THE COURT: OVERRULED FOR THE REASONS PREVIOUSLY

12:55PM 6 STATED AS TO THE ADMISSIBILITY OF THIS.

12:55PM 7 AGAIN, IT'S ONLY AS TO KNOWLEDGE OF THE RECIPIENT AND NOT

12:55PM 8 FOR THE TRUTH OF ANY MATTERS ASSERTED IN THIS.

12:55PM 9 THE WITNESS: THE LOGO IS SCHERING-PLOUGH.

12:55PM 10 BY MR. SCHENK:

12:55PM 11 Q. AND AT THE VERY TOP ON THE RIGHT ACROSS FROM THAT LOGO, DO

12:55PM 12 YOU SEE ANOTHER LOGO?

12:55PM 13 A. YES, THERANOS.

12:55PM 14 Q. DR. CULLEN, IF YOU'LL NOW TURN TO PAGE 51.

12:55PM 15 DO YOU SEE A CONCLUSIONS SECTION?

12:55PM 16 A. I DO.

12:55PM 17 Q. IN THE FIRST SENTENCE DOES IT NOW READ, "THE THERANOS

12:56PM 18 IL-6, TNF-ALPHA, CRP ASSAY MULTIPLEX HAS BEEN SHOWN TO GIVE

12:56PM 19 MORE ACCURATE AND PRECISE RESULTS FOR THREE INDEPENDENTLY

12:56PM 20 CALIBRATED CARTRIDGE LOTS AND ALL THE MANY INSTRUMENTS USED

12:56PM 21 THAN CURRENT 'GOLD STANDARD' REFERENCE METHODS"?

12:56PM 22 A. YES.

12:56PM 23 Q. DR. CULLEN, DID ANYBODY FROM THERANOS EVER ASK YOU

12:56PM 24 PERMISSION TO AFFIX A SCHERING-PLOUGH LOGO TO THE THERANOS

12:56PM 25 ASSAY DEVELOPMENT REPORT?

12:56PM 1 MS. WALSH: OBJECTION. 106.

12:56PM 2 THE COURT: YOU'RE ASKING AGAIN THAT THIS COME IN
12:56PM 3 SOLELY FOR THE KNOWLEDGE OF -- EXCUSE ME, KNOWLEDGE AS TO THE
12:56PM 4 RECIPIENTS OF THE EMAIL?

12:57PM 5 MR. SCHENK: YES.

12:57PM 6 THE COURT: RIGHT. OVERRULED.

12:57PM 7 YOU CAN ANSWER THE QUESTION.

12:57PM 8 THE WITNESS: OKAY. THANK YOU.

12:57PM 9 THERANOS DID NOT ASK PERMISSION TO USE THE SCHERING-PLOUGH
12:57PM 10 LOGO ON ANY OF THE REPORTS.

12:57PM 11 MR. SCHENK: YOUR HONOR, I HAVE -- MAY I APPROACH?

12:57PM 12 THE COURT: YES.

12:57PM 13 MR. SCHENK: (HANDING.)

12:58PM 14 Q. DR. CULLEN, I'VE HANDED YOU ANOTHER TAB. THIS ONE IS
12:58PM 15 EXHIBIT 277.

12:58PM 16 DO YOU SEE THAT?

12:58PM 17 A. YES.

12:58PM 18 Q. AND AGAIN, IS THIS AN EMAIL THREAD -- YOU CAN TAKE A
12:58PM 19 MOMENT TO LOOK THROUGH IT -- BUT YOU ARE NOT ON THIS EMAIL
12:58PM 20 THREAD; IS THAT CORRECT?

12:58PM 21 A. THAT'S CORRECT.

12:58PM 22 MR. SCHENK: YOUR HONOR, ONCE AGAIN, THE GOVERNMENT
12:58PM 23 INTENDS TO OFFER ONLY THE VERY TOP EMAIL AND THE ATTACHMENT IN
12:58PM 24 LIGHT OF OUR DISCUSSION.

12:58PM 25 THE PURPOSE IS THE SAME, FOR THE KNOWLEDGE OF THE

12:58PM 1 RECIPIENT ON THE CC LINE AS WE DISCUSSED ON THE MARCH 19TH
12:58PM 2 EMAIL EARLIER.

12:59PM 3 THE COURT: MS. WALSH.

12:59PM 4 MS. WALSH: OBJECTION. 106, 403, AND OUR PENDING
12:59PM 5 MOTION.

12:59PM 6 THE COURT: ALL RIGHT. THANK YOU.

12:59PM 7 YOU'RE STRIKING THE BOTTOM EMAIL AND WANT JUST THE TOP?

12:59PM 8 MR. SCHENK: YES, YOUR HONOR. SO ON PAGE 1, JUST
12:59PM 9 THAT VERY TOP EMAIL, AND THEN WE'LL PICK BACK UP ON PAGE 4,
12:59PM 10 WHICH IS WHERE THE ATTACHMENT BEGINS.

12:59PM 11 THE COURT: ALL RIGHT. THANK YOU.

12:59PM 12 I'LL OVERRULE THE OBJECTION.

12:59PM 13 THIS IS BEING ADMITTED, AGAIN, LADIES AND GENTLEMEN, NOT
12:59PM 14 FOR THE TRUTH OF THE MATTER ASSERTED, BUT ONLY AS TO THE ISSUE
12:59PM 15 OF KNOWLEDGE, KNOWLEDGE OF THE RECIPIENT OF THIS EMAIL, FOR
12:59PM 16 THAT LIMITED PURPOSE ONLY.

12:59PM 17 AND YOU'LL STRIKE THE BOTTOM, AND IT'S OTHERWISE ADMITTED.

12:59PM 18 (GOVERNMENT'S EXHIBIT 277, TOP EMAIL AND ATTACHMENT, WAS
01:00PM 19 RECEIVED IN EVIDENCE.)

01:00PM 20 MR. SCHENK: THANK YOU. AND OTHERWISE PERMISSION TO
01:00PM 21 PUBLISH?

01:00PM 22 THE COURT: YES.

01:00PM 23 BY MR. SCHENK:

01:00PM 24 Q. DR. CULLEN, IF YOU'LL LOOK AT THE EMAIL EITHER IN FRONT OF
01:00PM 25 YOU OR ON THE SCREEN, DOES IT APPEAR TO BE AN EMAIL FROM

01:00PM 1 ELIZABETH HOLMES TO SOMEONE NAMED BRUCESHEPHERD@WAL-MART.COM.

01:00PM 2 DO YOU SEE THAT?

01:00PM 3 A. YES.

01:00PM 4 Q. AND THEN ON THE CC LINE, IS THERE SOMEONE NAMED

01:00PM 5 SUNNY BALWANI?

01:00PM 6 A. YES.

01:00PM 7 Q. AND THEN DO YOU SEE AN ATTACHMENT TO THIS EMAIL?

01:00PM 8 A. YES.

01:00PM 9 Q. AND IF YOU'LL NOW TURN TO PAGE 4 OF THE DOCUMENT, THE

01:00PM 10 FIRST PAGE OF THE ATTACHMENT.

01:00PM 11 DO YOU RECOGNIZE THIS DOCUMENT?

01:00PM 12 A. YES.

01:00PM 13 Q. AND WHAT IS THIS?

01:00PM 14 A. IT'S THE SAME VALIDATION REPORT OR ASSAY DEVELOPMENT

01:00PM 15 REPORT THAT WAS PROVIDED TO US, SCHERING-PLOUGH.

01:00PM 16 Q. OKAY. AT THE VERY TOP OF THIS VERSION OF THE DOCUMENT, ON

01:00PM 17 THE LEFT-HAND SIDE IN THE HEADER, DO YOU SEE A LOGO?

01:00PM 18 A. YES.

01:00PM 19 Q. WHOSE LOGO?

01:00PM 20 A. THERANOS.

01:00PM 21 Q. I'M SORRY. WHOSE LOGO?

01:01PM 22 A. THERANOS.

01:01PM 23 Q. ACROSS FROM THE THERANOS LOGO ON THIS VERSION, DO YOU SEE

01:01PM 24 ANY OTHER LOGOS?

01:01PM 25 A. NO OTHER LOGO.

01:01PM 1 Q. THANK YOU.

01:01PM 2 IN ADDITION TO TRAVELLING TO PALO ALTO AS PART OF YOUR DUE

01:01PM 3 DILIGENCE, WAS THERE AN OCCASION WHEN THERANOS PROVIDED ITS

01:01PM 4 TECHNOLOGY TO YOUR LAB IN NEW JERSEY?

01:01PM 5 A. YES. WE RECEIVED TWO INSTRUMENTS FROM THEM.

01:01PM 6 Q. WAS THAT AT THE SAME TIME THAT THIS DUE DILIGENCE WORK WAS

01:01PM 7 GOING ON?

01:01PM 8 A. I BELIEVE IT WAS PRIOR, BUT CLOSE TO THE SAME TIME.

01:01PM 9 Q. OKAY. AND FOR WHAT PURPOSE DID SCHERING-PLOUGH RECEIVE

01:01PM 10 THESE TWO DEVICES?

01:01PM 11 A. JUST FOR BETA TESTING PURPOSES.

01:01PM 12 Q. WHAT DOES THAT MEAN, BETA TESTING?

01:01PM 13 A. JUST TO BE ABLE TO TEST THE TECHNOLOGY UNDER OUR

01:01PM 14 CONDITIONS IN OUR LAB.

01:01PM 15 Q. AND DID YOU OR YOUR LAB DO THAT TESTING?

01:01PM 16 A. YES, WE DID.

01:01PM 17 Q. HOW DID YOU DO THAT? WHAT, IN FACT, DID YOU DO?

01:02PM 18 A. SO WE SPIKE ONE OF THE ANALYTES, EITHER TNF OR

01:02PM 19 INTERLEUKIN-6, OR C REACTIVE PROTEIN INTO HUMAN BLOOD

01:02PM 20 SPECIMENS, AND THEN WE MEASURE THEM.

01:02PM 21 Q. DID YOU SAY SPIKED?

01:02PM 22 A. YES. SPIKED JUST MEANS THAT YOU CAN PURCHASE PURIFIED

01:02PM 23 REAGENTS AND PUT THEM INTO THE HUMAN SERUM SAMPLE SO THAT YOU

01:02PM 24 KNOW THE EXACT AMOUNT IN EACH SAMPLE THAT YOU'RE GOING TO TEST.

01:02PM 25 Q. DO YOU KNOW HOW MANY SAMPLES SCHERING-PLOUGH RAN ON THESE

01:02PM 1 THERANOS DEVICES?

01:02PM 2 A. I DON'T REMEMBER, NO.

01:02PM 3 Q. WOULD YOU CALL THE WORK THAT SCHERING-PLOUGH DID ON THESE
01:02PM 4 THERANOS DEVICES VALIDATION?

01:02PM 5 A. NO.

01:03PM 6 Q. WHY NOT?

01:03PM 7 A. THEY WERE INSUFFICIENT DETERMINATIONS. WE DIDN'T DO
01:03PM 8 ENOUGH TESTS. IT WAS SIMPLY A SUPERFICIAL LOOK AT THE
01:03PM 9 CAPABILITY OF THE INSTRUMENT.

01:03PM 10 Q. AFTER RUNNING THESE TESTS ON THE THERANOS DEVICES, DID YOU
01:03PM 11 EVER TELL ANYBODY AT THERANOS THAT SCHERING-PLOUGH HAD NOW
01:03PM 12 VALIDATED THERANOS'S TECHNOLOGY OR THERANOS'S DEVICES?

01:03PM 13 A. NO.

01:03PM 14 Q. TO YOUR KNOWLEDGE, DID ANYBODY FROM SCHERING-PLOUGH, AFTER
01:03PM 15 TESTING THESE DEVICES AT SCHERING-PLOUGH, EVER TELL SOMEONE AT
01:03PM 16 THERANOS THAT SCHERING-PLOUGH HAD VALIDATE THERANOS'S
01:03PM 17 TECHNOLOGY?

01:03PM 18 A. NO.

01:03PM 19 MR. SCHENK: MAY I HAVE ONE MOMENT, YOUR HONOR?

01:03PM 20 THE COURT: YES.

01:03PM 21 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

01:04PM 22 MR. SCHENK: THANK YOU, YOUR HONOR.

01:04PM 23 NO FURTHER QUESTIONS.

01:04PM 24 THE COURT: CROSS-EXAMINATION?

01:04PM 25 MS. WALSH: YES, YOUR HONOR.

01:04PM 1 MAY I APPROACH THE BENCH, YOUR HONOR?

01:04PM 2 THE COURT: YES, YES. THANK YOU.

01:04PM 3 MS. WALSH: (HANDING.)

01:04PM 4 MAY I APPROACH THE WITNESS, YOUR HONOR?

01:05PM 5 THE COURT: YES, YES, OF COURSE.

01:05PM 6 MS. WALSH: THANK YOU.

01:05PM 7 (HANDING.)

01:05PM 8 **CROSS-EXAMINATION**

01:05PM 9 BY MS. WALSH:

01:05PM 10 Q. GOOD AFTERNOON, DR. CULLEN.

01:05PM 11 LET ME REMOVE MY MASK. MY NAME IS AMY WALSH AND I

01:05PM 12 REPRESENT MR. BALWANI.

01:05PM 13 I'M GOING TO ASK YOU SOME QUESTIONS, AND I'M GOING TO ASK

01:05PM 14 YOU SOME QUESTIONS ABOUT YOUR DIRECT TESTIMONY. OKAY?

01:05PM 15 SO YOU WERE ASKED WHETHER -- ABOUT THAT MAY 2009 MEETING,

01:05PM 16 WHETHER MR. BALWANI WAS PRESENT DURING THAT MEETING, AND YOU

01:05PM 17 SAID YOU DON'T REMEMBER; IS THAT RIGHT?

01:05PM 18 A. YES.

01:05PM 19 Q. AND YOU SAID THAT YOU DID NOT KNOW HIS NAME; IS THAT

01:05PM 20 CORRECT?

01:05PM 21 A. THAT'S CORRECT.

01:05PM 22 Q. AND MR. SCHENK ASKED YOU, IS IT POSSIBLE THAT YOU NEVER

01:05PM 23 MET MR. BALWANI; RIGHT?

01:05PM 24 AND YOU SAID YES, THAT'S POSSIBLE; RIGHT?

01:05PM 25 A. CORRECT.

01:06PM 1 Q. AND, IN FACT, YOU'VE NEVER MET MR. BALWANI; CORRECT?

01:06PM 2 A. NOT TO MY RECOLLECTION.

01:06PM 3 Q. WELL, YOU DON'T RECOGNIZE HIM IN THE COURTROOM TODAY?

01:06PM 4 A. NO.

01:06PM 5 Q. AND IN ALL OF YOUR COMMUNICATIONS WITH THERANOS, YOU DID
01:06PM 6 NOT SPEAK WITH MR. BALWANI; IS THAT RIGHT?

01:06PM 7 A. CORRECT.

01:06PM 8 Q. YOU DIDN'T EMAIL WITH HIM; CORRECT?

01:06PM 9 A. CORRECT.

01:06PM 10 Q. AND IN ALL OF THE EMAILS THAT MR. SCHENK SHOWED YOU DURING
01:06PM 11 YOUR DIRECT TESTIMONY, MR. BALWANI WAS NOT ON ANY OF THOSE
01:06PM 12 EMAILS; RIGHT?

01:06PM 13 A. CORRECT.

01:06PM 14 Q. AND WERE YOU AWARE THAT DURING THE FIRST HALF OF 2009,
01:06PM 15 MR. BALWANI DIDN'T EVEN WORK FOR THERANOS? WERE YOU AWARE OF
01:06PM 16 THAT?

01:06PM 17 A. NO.

01:06PM 18 Q. OKAY. AND YOU JUST TESTIFIED ABOUT THE EARLY 2009 TIME
01:06PM 19 PERIOD WHEN THERANOS PROVIDED SCHERING-PLOUGH WITH THE TWO
01:06PM 20 DEVICES.

01:06PM 21 DO YOU REMEMBER THAT TESTIMONY?

01:07PM 22 A. YES.

01:07PM 23 Q. AND YOU SAID THAT YOU SPIKED THE SAMPLE. I GUESS IT WAS
01:07PM 24 RUN IN THE MACHINE; IS THAT RIGHT?

01:07PM 25 A. YES.

01:07PM 1 Q. OKAY. AND SO THERANOS SENT SCHERING-PLOUGH TWO OF ITS
01:07PM 2 DEVICES; CORRECT?

01:07PM 3 A. CORRECT.

01:07PM 4 Q. AND SCHERING-PLOUGH HAD THOSE DEVICES INDEPENDENT OF
01:07PM 5 THERANOS; RIGHT?

01:07PM 6 A. I DON'T KNOW WHAT YOU MEAN BY INDEPENDENT OF THERANOS.

01:07PM 7 Q. YEAH. I'LL ASK A DIFFERENT QUESTION. THANKS.
01:07PM 8 THERANOS DID NOT SUPERVISE SCHERING-PLOUGH WHEN
01:07PM 9 SCHERING-PLOUGH SPIKED THE SAMPLES --

01:07PM 10 A. CORRECT.

01:07PM 11 Q. -- AND RAN THEM IN THE DEVICES?

01:07PM 12 THE COURT: DR. CULLEN, I'M GOING TO ASK YOU TO WAIT
01:07PM 13 UNTIL THE QUESTION IS FINISHED.

01:07PM 14 THE WITNESS: OKAY.

01:07PM 15 THE COURT: AND THEN ANSWER. THAT WAY IT WILL MAKE
01:07PM 16 OUR REPORTER MUCH HAPPIER AS WELL, SO THANK YOU.
01:07PM 17 BY MS. WALSH:

01:07PM 18 Q. AND I'LL WAIT UNTIL YOUR ANSWER IS FINISHED, WHICH WILL
01:07PM 19 HELP.

01:07PM 20 SO SCHERING-PLOUGH HAD THE DEVICES; CORRECT?

01:07PM 21 A. CORRECT.

01:07PM 22 Q. AND INDEPENDENT OF THERANOS, SCHERING-PLOUGH COULD RUN THE
01:08PM 23 SAMPLES WHENEVER IT WANTED; RIGHT?

01:08PM 24 A. CORRECT.

01:08PM 25 Q. AND IT COULD EVALUATE THE RESULTS INDEPENDENT OF THERANOS;

01:08PM 1 CORRECT?

01:08PM 2 A. THAT'S NOT CORRECT, BECAUSE THE INSTRUMENT ITSELF DID NOT

01:08PM 3 HAVE A READOUT FOR RESULTS. THEY HAD TO BE SENT TO US.

01:08PM 4 Q. THE RESULTS HAD TO BE SENT TO YOU?

01:08PM 5 A. CORRECT.

01:08PM 6 Q. FROM THERANOS?

01:08PM 7 A. CORRECT.

01:08PM 8 Q. OKAY. BUT THE DEVICE ITSELF YOU HAD IN YOUR POSSESSION;

01:08PM 9 RIGHT?

01:08PM 10 A. CORRECT.

01:08PM 11 Q. AND YOU COULD RUN THE DEVICE; CORRECT?

01:08PM 12 A. CORRECT.

01:08PM 13 Q. AND YOU DIDN'T HAVE SOMEONE FROM THERANOS SUPERVISING THAT

01:08PM 14 PROCESS?

01:08PM 15 A. ALL CORRECT.

01:08PM 16 Q. OKAY. AND YOU SAID THAT YOU TOOK A SUPERFICIAL LOOK AT

01:08PM 17 THE CAPABILITY OF THE MACHINE; IS THAT RIGHT?

01:08PM 18 A. YES.

01:08PM 19 Q. JUST NOW?

01:08PM 20 BUT, IN FACT, WHEN YOU DID TAKE WHATEVER LOOK YOU DID TAKE

01:08PM 21 AT THE MACHINE, YOU WERE -- YOUR TEAM WAS IMPRESSED WITH THE

01:08PM 22 MACHINE'S SENSITIVITY; ISN'T THAT RIGHT?

01:09PM 23 A. THAT IS CORRECT.

01:09PM 24 Q. OKAY. AND AS FAR AS YOU COULD TELL, THE MACHINE PROVIDED

01:09PM 25 ACCURATE RESULTS; RIGHT?

01:09PM 1 A. AS FAR AS WE COULD TELL, YES.

01:09PM 2 Q. NOW, IN THE SPRING OF 2009, YOU SAID YOU WENT TO A MEETING

01:09PM 3 AT THERANOS IN CALIFORNIA; RIGHT?

01:09PM 4 A. THAT'S CORRECT.

01:09PM 5 Q. AND YOU FLEW HERE FROM NEW JERSEY?

01:09PM 6 A. CORRECT.

01:09PM 7 Q. AND THE PURPOSE OF THAT MEETING WAS TO HAVE A DISCUSSION

01:09PM 8 ABOUT THE THERANOS TECHNOLOGY; RIGHT?

01:09PM 9 A. THAT'S CORRECT.

01:09PM 10 Q. AND YOU WANTED TO TALK ABOUT THE CHEMISTRY IN THE ASSAYS;

01:09PM 11 RIGHT?

01:09PM 12 A. CORRECT.

01:09PM 13 Q. AND, IN FACT, IT WAS -- IT WASN'T JUST ONE ASSAY, IT WAS

01:09PM 14 THREE DIFFERENT ASSAYS; RIGHT?

01:09PM 15 A. IT WAS THOSE THREE ASSAYS. BUT IN ADDITION, WE WERE

01:09PM 16 INTERESTED IN PURSUING IT FOR POTENTIALLY OTHER ANALYTES,

01:09PM 17 INCLUDING PROPRIETARY.

01:09PM 18 Q. OKAY. BUT THE ASSAYS THAT YOU RAN, THERE WERE THREE

01:10PM 19 DIFFERENT ASSAYS; CORRECT?

01:10PM 20 A. CORRECT.

01:10PM 21 Q. AND THOSE THREE DIFFERENT ASSAYS RAN ON ONE CARTRIDGE; IS

01:10PM 22 THAT RIGHT?

01:10PM 23 A. THAT IS CORRECT.

01:10PM 24 Q. OKAY. SO WHEN YOU CAME TO CALIFORNIA IN MAY OF 2009, THE

01:10PM 25 MEETING, THE PURPOSE OF THE MEETING WAS TO DISCUSS THE SCIENCE

01:10PM 1 OF THE ASSAYS; CORRECT?

01:10PM 2 A. CORRECT.

01:10PM 3 Q. OKAY. AND IF WE CAN PULL UP WHAT IS IN EVIDENCE AS

01:10PM 4 EXHIBIT 192.

01:10PM 5 AND THIS IS THE CALENDAR INVITE AND AGENDA FOR THAT

01:10PM 6 MEETING; CORRECT?

01:10PM 7 A. YES.

01:10PM 8 Q. AND IF WE CAN GO TO THE SECOND PAGE, THAT'S THE AGENDA,

01:10PM 9 AND I WANT TO FOCUS IN ON THE SCHERING-PLOUGH PARTICIPANTS IN

01:10PM 10 THAT MEETING.

01:10PM 11 SO ONE OF THE PARTICIPANTS WAS DR. ABUTARIF; IS THAT

01:11PM 12 RIGHT?

01:11PM 13 A. YES.

01:11PM 14 Q. AND HE WAS A PH.D. AND A SCIENTIST; CORRECT?

01:11PM 15 A. CORRECT.

01:11PM 16 Q. AND THERE WAS A DR. FICK, WHO WAS A MEDICAL DOCTOR; RIGHT?

01:11PM 17 A. YES.

01:11PM 18 Q. AND A DR. GHEYAS; CORRECT?

01:11PM 19 A. CORRECT.

01:11PM 20 Q. WITH A PH.D. IN STATISTICS?

01:11PM 21 A. CORRECT.

01:11PM 22 Q. AND A DR. VAN HOOGBRATEN; CORRECT?

01:11PM 23 A. CORRECT.

01:11PM 24 Q. WHO IS BOTH A DOCTOR AND A PH.D.; RIGHT?

01:11PM 25 A. THAT IS CORRECT.

01:11PM 1 Q. AND LET'S LOOK AT THE PEOPLE WHO ATTENDED ON BEHALF OF
01:11PM 2 THERANOS.
01:11PM 3 THERE'S DR. IAN GIBBONS; CORRECT?
01:11PM 4 A. YES.
01:11PM 5 Q. AND HE'S A PH.D.?
01:11PM 6 A. CORRECT.
01:11PM 7 Q. AND DR. MICHELSON, ALSO A PH.D.; RIGHT?
01:11PM 8 A. RIGHT.
01:11PM 9 Q. AND DR. THIBONNIER; CORRECT?
01:11PM 10 A. CORRECT.
01:11PM 11 Q. AND ALSO HE WAS AN M.D.; RIGHT?
01:11PM 12 A. CORRECT.
01:11PM 13 Q. AND ACTUALLY THE CHIEF MEDICAL OFFICER OF THERANOS AT THE
01:12PM 14 TIME; RIGHT?
01:12PM 15 A. CORRECT.
01:12PM 16 Q. AND THEN DR. YOUNG, WHO WAS A PH.D.
01:12PM 17 DO YOU SEE HIM?
01:12PM 18 A. CORRECT.
01:12PM 19 Q. AND SO THIS WAS A MEETING REALLY AMONG THE SCIENTISTS
01:12PM 20 BETWEEN SCHERING-PLOUGH AND THERANOS; CORRECT?
01:12PM 21 A. THAT IS CORRECT.
01:12PM 22 Q. AND THIS IS A MEETING WHERE YOU FELT THAT, OR YOU
01:12PM 23 TESTIFIED THAT YOU HAD SOME ISSUES WITH MS. HOLMES'S CANDOR; IS
01:12PM 24 THAT RIGHT?
01:12PM 25 A. THAT'S CORRECT.

01:12PM 1 Q. AND YOU SAID ON DIRECT THAT YOU DIDN'T FEEL THAT SHE WAS
01:12PM 2 ANSWERING THE QUESTIONS ADEQUATELY; IS THAT RIGHT?

01:12PM 3 A. THAT'S CORRECT.

01:12PM 4 Q. AND YOU FELT LIKE YOU COULDN'T GET A CERTAIN LEVEL OF
01:12PM 5 DISCLOSURE FROM THERANOS AT THE TIME; CORRECT?

01:12PM 6 A. CORRECT.

01:12PM 7 Q. BUT YOU DID NOT SAY ANYTHING DURING THAT MEETING ABOUT NOT
01:12PM 8 GETTING YOUR QUESTIONS ANSWERED; RIGHT?

01:12PM 9 A. CORRECT.

01:12PM 10 Q. YOU NEVER TOLD MS. HOLMES; CORRECT?

01:12PM 11 A. CORRECT.

01:12PM 12 Q. AND YOU NEVER TOLD ANY OF THE SCIENTISTS WHO PARTICIPATED
01:13PM 13 IN THAT MEETING; CORRECT?

01:13PM 14 A. THAT'S CORRECT.

01:13PM 15 Q. AND YOU SAID YOU DIDN'T DO THAT BECAUSE IT FELT AWKWARD AT
01:13PM 16 THE TIME; CORRECT?

01:13PM 17 A. CORRECT.

01:13PM 18 Q. BUT THE FACT IS THAT YOU NEVER EXPRESSED YOUR VIEWS?

01:13PM 19 A. THAT IS CORRECT.

01:13PM 20 Q. OKAY. AND MR. BALWANI WAS NOT AT THIS MEETING; CORRECT?

01:13PM 21 A. CORRECT.

01:13PM 22 Q. OKAY. AND MR. SCHENK SHOWED YOU EXHIBIT 223, WHICH WAS A
01:13PM 23 JUNE 2009 EMAIL.

01:13PM 24 YES, IF WE CAN PULL THAT UP.

01:13PM 25 AND ON THE BOTTOM EMAIL, DR. CULLEN, IN JUNE OF 2009, YOU

01:13PM 1 ARE EMAILING GARY FRENZEL FROM THERANOS; RIGHT?

01:14PM 2 A. CORRECT.

01:14PM 3 Q. AND THE SUBJECT IS ASSAY DEVELOPMENT; RIGHT?

01:14PM 4 A. YES.

01:14PM 5 Q. AND YOU SAY, "HI GARY,

01:14PM 6 "WE HAD A TEAM MEETING TODAY AND JIM MCCLEOD ASKED ME TO

01:14PM 7 CHECK IN AND GET AN ASSAY DEVELOPMENT UPDATE FOR THE TEAM.

01:14PM 8 COULD YOU GIVE ME A SYNOPSIS OF WHERE THINGS ARE AT AND IF YOU

01:14PM 9 NEED ANYTHING FROM OUR END?"

01:14PM 10 THAT'S WHAT YOU SAID; RIGHT?

01:14PM 11 A. CORRECT.

01:14PM 12 Q. AND YOU DIDN'T EXPRESS ANY OF THE VIEWS THAT YOU SAY YOU

01:14PM 13 HAD IN THE MEETING IN THIS EMAIL EITHER; RIGHT?

01:14PM 14 A. THAT IS CORRECT.

01:14PM 15 Q. YOU DIDN'T RAISE ANY QUESTIONS ABOUT THE THERANOS

01:14PM 16 TECHNOLOGY; RIGHT?

01:14PM 17 A. THAT IS CORRECT.

01:14PM 18 Q. AND YOU DIDN'T COMMENT ON MS. HOLMES'S CANDOR IN THIS

01:14PM 19 EMAIL; CORRECT?

01:14PM 20 A. CORRECT.

01:14PM 21 Q. OKAY. SO LET'S FAST FORWARD IN TIME TO DECEMBER 2009, AND

01:14PM 22 LET'S PULL UP WHAT IS IN EVIDENCE AS EXHIBIT 262.

01:15PM 23 AND IF WE GO FROM THE BOTTOM EMAIL FROM MR. FRENZEL TO YOU

01:15PM 24 AT 2:26 P.M., MR. FRENZEL EMAILS YOU SAYING, "HI CONNIE, I JUST

01:15PM 25 WANTED TO MAKE SURE THAT YOU RECEIVED THIS REPORT."

01:15PM 1 AND HE'S REFERRING TO THE REPORT THAT WE JUST LOOKED AT;
01:15PM 2 CORRECT?
01:15PM 3 A. THAT'S CORRECT.
01:15PM 4 Q. AND "WE ARE LOOKING FORWARD TO DISCUSSING IT WITH YOU."
01:15PM 5 AND THEN IF WE CAN GO TO THE NEXT EMAIL UP.
01:15PM 6 AND WHAT YOU SAY TO HIM IS, "HI GARY,
01:15PM 7 "I'M SORRY FOR THE SLOW RESPONSE. I DID RECEIVE THE
01:15PM 8 REPORT, I'D ACTUALLY LIKE TO DEFER OUR DISCUSSIONS UNTIL
01:15PM 9 JANUARY. WE ARE TOTALLY SWAMPED WITH THE MERGER WITH MERCK."
01:15PM 10 IS THAT RIGHT? IS THAT WHAT YOU WROTE?
01:15PM 11 A. CORRECT.
01:15PM 12 Q. OKAY. AND YOU SAID ON DIRECT THAT YOU ACTUALLY READ THE
01:15PM 13 REPORT AT THE TIME YOU SENT THIS EMAIL; IS THAT CORRECT?
01:16PM 14 A. THAT'S CORRECT.
01:16PM 15 Q. AND YOU AGAIN IN THIS EMAIL DID NOT VOICE ANY CONCERNS
01:16PM 16 ABOUT THE THERANOS TECHNOLOGY; IS THAT CORRECT?
01:16PM 17 A. THAT'S CORRECT.
01:16PM 18 Q. AND YOU DID NOT VOICE THE CONCERNS THAT YOU SAID YOU HAD
01:16PM 19 IN THE MEETING ABOUT MS. HOLMES'S CANDOR; RIGHT?
01:16PM 20 A. THAT IS CORRECT.
01:16PM 21 Q. OKAY. AND IT DOESN'T -- YOUR EMAIL DIDN'T SAY REALLY
01:16PM 22 ANYTHING ABOUT THE REPORT, WHETHER YOU THOUGHT IT WAS GOOD OR
01:16PM 23 BAD OR IF YOU HAD ISSUES WITH IT; CORRECT?
01:16PM 24 A. CORRECT.
01:16PM 25 Q. NOW, MR. SCHENK ASKED YOU --

01:16PM 1 WE CAN TAKE THAT DOWN, MR. ALLEN. THANK YOU.

01:16PM 2 YOU DEFERRED THE DISCUSSIONS IN THE EMAIL THAT WE JUST SAW

01:16PM 3 WITH MR. FRENZEL BECAUSE OF THE MERGER; RIGHT?

01:16PM 4 A. THAT'S CORRECT.

01:16PM 5 Q. AND MR. FRENZEL ASKED YOU IF YOU HAD ANY OTHER DISCUSSIONS

01:16PM 6 WITH THERANOS -- I'M SORRY, WITHDRAWN ON THAT.

01:16PM 7 MY QUESTION IS MR. SCHENK, DURING YOUR DIRECT EXAMINATION,

01:17PM 8 ASKED YOU IF YOU HAD ANY FURTHER CONVERSATIONS WITH THERANOS

01:17PM 9 AFTER DECEMBER 2009; CORRECT?

01:17PM 10 A. THAT IS CORRECT.

01:17PM 11 Q. AND YOU SAID NOT THAT I RECALL; RIGHT?

01:17PM 12 A. THAT IS CORRECT.

01:17PM 13 Q. BUT ISN'T IT TRUE, DR. CULLEN, THAT YOU RECONNECTED WITH

01:17PM 14 THERANOS IN MARCH OF 2010?

01:17PM 15 A. IF I DID, I DON'T REMEMBER IT.

01:17PM 16 Q. OKAY. AND I CAN SHOW YOU SOMETHING TO REFRESH YOUR

01:17PM 17 RECOLLECTION IF YOU NEED IT.

01:17PM 18 A. SURE.

01:17PM 19 Q. BUT DO YOU RECALL WRITING TO THERANOS THAT YOU ASKED A

01:17PM 20 SCIENTIST FROM YOUR GROUP TO REACH OUT TO GARY SO YOU COULD

01:17PM 21 DISCUSS THE REPORT?

01:17PM 22 DO YOU REMEMBER THAT?

01:17PM 23 A. YES.

01:17PM 24 Q. OKAY. SO CAN WE -- ACTUALLY, CAN YOU TURN IN YOUR EXHIBIT

01:17PM 25 BINDER TO EXHIBIT 10574. JUST LET ME KNOW WHEN YOU HAVE IT IN

01:18PM 1 FRONT OF YOU.

01:18PM 2 A. I HAVE IT.

01:18PM 3 Q. OKAY. DO YOU SEE THE EMAIL FROM YOU TO MS. HOLMES?

01:18PM 4 DO YOU SEE THAT?

01:18PM 5 A. YES.

01:18PM 6 Q. AND THIS IS ON MARCH 6TH, 2010?

01:18PM 7 A. YES.

01:18PM 8 Q. IS THAT AN EMAIL THAT YOU SENT TO MS. HOLMES AT THE TIME

01:18PM 9 THAT THE EMAIL SAYS YOU SENT IT?

01:18PM 10 A. YES.

01:18PM 11 MS. WALSH: YOUR HONOR, WE OFFER 10574.

01:18PM 12 MR. SCHENK: NO OBJECTION.

01:18PM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:18PM 14 (DEFENDANT'S EXHIBIT 10574 WAS RECEIVED IN EVIDENCE.)

01:18PM 15 BY MS. WALSH:

01:18PM 16 Q. OKAY. DR. CULLEN, IN -- LET'S GO TO THE BOTTOM EMAIL FROM

01:18PM 17 MS. HOLMES.

01:18PM 18 WHAT SHE SAYS TO YOU IS -- AND AGAIN, THIS IS MARCH 5TH,

01:18PM 19 2010, A FEW MONTHS AFTER DECEMBER 2009. AND SHE SAYS,

01:19PM 20 "CONNIE --

01:19PM 21 "CAROLYN LET ME KNOW THAT YOU TWO CONNECTED -- I AM REALLY

01:19PM 22 LOOKING FORWARD TO OUR NEXT CONVERSATION. PLEASE LET ME KNOW

01:19PM 23 IF THERE IS ANYTHING WE CAN DO FROM OUR END TO HELP FACILITATE

01:19PM 24 THINGS MOVING FORWARD IN THE MEANTIME.

01:19PM 25 "CONGRATULATIONS ON YOUR NEW ROLE -- I WAS SO HAPPY TO

01:19PM 1 HEAR ABOUT IT."

01:19PM 2 DO YOU SEE THAT?

01:19PM 3 A. YES, I DO.

01:19PM 4 Q. AND SHE'S CONGRATULATING YOU ON YOUR NEW ROLE IN THE

01:19PM 5 MERGER; RIGHT?

01:19PM 6 A. YES.

01:19PM 7 Q. OKAY. AND IF WE GO UP TO THE NEXT PART OF THE CHAIN, YOU

01:19PM 8 RESPOND TO MS. HOLMES AND YOU SAY, "HI ELIZABETH,

01:19PM 9 "THANKS FOR THE NOTE BELOW. THINGS WILL SETTLE DOWN

01:19PM 10 EVENTUALLY. IN THE MEANTIME, I'VE ASKED A SCIENTIST FROM MY

01:19PM 11 GROUP (DON LEE) TO REACH OUT TO GARY TO DISCUSS THE SPECIFICS

01:19PM 12 OF THE VALIDATION."

01:19PM 13 DO YOU SEE THAT?

01:19PM 14 A. YES, I DO.

01:19PM 15 Q. OKAY. AND SO WHEN YOU TESTIFIED THAT YOU DIDN'T REMEMBER

01:20PM 16 ANY OTHER INTERACTION WITH THERANOS AFTER DECEMBER 2009, DOES

01:20PM 17 THIS REFRESH YOUR RECOLLECTION AS TO FURTHER COMMUNICATIONS

01:20PM 18 WITH THERANOS AFTER THAT POINT?

01:20PM 19 A. IT DOES.

01:20PM 20 Q. OKAY. AND AGAIN, IN THIS EMAIL IN MARCH OF 2010, YOU

01:20PM 21 DON'T EXPRESS ANY MISGIVINGS ABOUT THE THERANOS TECHNOLOGY;

01:20PM 22 CORRECT?

01:20PM 23 A. CORRECT.

01:20PM 24 Q. NOR ANY MISGIVINGS ABOUT MS. HOLMES'S CANDOR OR ABILITY TO

01:20PM 25 ANSWER QUESTIONS ABOUT THE THERANOS TECHNOLOGY; RIGHT?

01:20PM 1 A. CORRECT.

01:20PM 2 MS. WALSH: YOUR HONOR, MAY I HAVE A MOMENT?

01:20PM 3 THE COURT: YES.

01:20PM 4 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

01:21PM 5 MS. WALSH: NOTHING FURTHER, YOUR HONOR.

01:21PM 6 THE COURT: MR. SCHENK.

01:21PM 7 MR. SCHENK: JUST BRIEFLY.

01:21PM 8 **REDIRECT EXAMINATION**

01:21PM 9 BY MR. SCHENK:

01:21PM 10 Q. DR. CULLEN, IN THIS FURTHER EMAIL THAT IS EXHIBIT 10574,

01:21PM 11 THE ONE YOU WERE DISCUSSING WITH MS. WALSH --

01:21PM 12 A. YES.

01:21PM 13 Q. -- WHERE MS. HOLMES WROTE TO YOU AND CONGRATULATED ON YOU

01:21PM 14 YOUR NEW ROLE AFTER THE MERGER, DID YOU RESPOND BY TELLING

01:21PM 15 MS. HOLMES THAT SCHERING-PLOUGH COMPREHENSIVELY VALIDATED

01:21PM 16 THERANOS'S TECHNOLOGY?

01:21PM 17 A. NO.

01:21PM 18 Q. DID YOU EVER SAY THAT TO MS. HOLMES?

01:21PM 19 A. NO.

01:21PM 20 Q. DID YOU EVER SAY THAT TO ANYBODY AT THERANOS?

01:21PM 21 A. NO.

01:21PM 22 Q. DID ANYBODY, TO YOUR KNOWLEDGE, FROM SCHERING-PLOUGH EVER

01:22PM 23 SAY THAT TO ANYBODY AT THERANOS?

01:22PM 24 A. NO.

01:22PM 25 Q. THANK YOU.

01:22PM 1 NO FURTHER QUESTIONS.

01:22PM 2 THE COURT: MS. WALSH?

01:22PM 3 MS. WALSH: NOTHING FURTHER.

01:22PM 4 THE COURT: MAY THIS WITNESS BE EXCUSED?

01:22PM 5 MR. SCHENK: YES.

01:22PM 6 THE COURT: MS. WALSH, MAY THIS WITNESS BE EXCUSED?

01:22PM 7 MS. WALSH: YES.

01:22PM 8 THE COURT: THANK YOU. DOCTOR, YOU'RE EXCUSED.

01:22PM 9 THANK YOU.

01:22PM 10 DOES THE GOVERNMENT HAVE ADDITIONAL WITNESSES AVAILABLE

01:22PM 11 TODAY?

01:22PM 12 MR. BOSTIC: YES, YOUR HONOR, WE DO.

01:22PM 13 THE UNITED STATES CALLED DANIEL EDLIN.

01:23PM 14 THE COURT: FOLKS, IF YOU WANT TO STAND AND STRETCH

01:23PM 15 FOR A MOMENT WHILE THE WITNESS COMES IN.

01:23PM 16 SIR, IF YOU WOULD COME AND STAND AND RAISE YOUR RIGHT

01:23PM 17 HAND.

01:23PM 18 **(GOVERNMENT'S WITNESS, DANIEL EDLIN, WAS SWORN.)**

01:23PM 19 THE WITNESS: YES.

01:23PM 20 THE COURT: PLEASE HAVE A SEAT HERE, SIR.

01:23PM 21 AND PLEASE BE SEATED EVERYONE.

01:23PM 22 THANK YOU.

01:23PM 23 MAKE YOURSELF COMFORTABLE. FEEL FREE TO ADJUST THAT

01:23PM 24 MICROPHONE AND THE CHAIR AS NEEDED FOR YOUR COMFORT.

01:23PM 25 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

01:23PM 1 AND THEN SPELL IT, PLEASE.

01:23PM 2 THE WITNESS: DANIEL EDLIN, D-A-N-I-E-L, E-D-L-I-N.

01:23PM 3 THE COURT: THANK YOU.

01:23PM 4 MR. BOSTIC.

01:23PM 5 MR. BOSTIC: THANK YOU, YOUR HONOR.

01:23PM 6 **DIRECT EXAMINATION**

01:23PM 7 BY MR. BOSTIC:

01:23PM 8 Q. GOOD AFTERNOON, MR. EDLIN.

01:23PM 9 A. GOOD AFTERNOON.

01:23PM 10 Q. I UNDERSTAND FROM THE COURT THAT YOU ARE PERMITTED TO
01:24PM 11 TESTIFY WITHOUT A MASK IF YOU ARE FULLY VACCINATED; IS THAT
01:24PM 12 CORRECT?

01:24PM 13 A. YES.

01:24PM 14 Q. MR. EDLIN, WAS THERE A TIME WHEN YOU WORKED FOR A COMPANY
01:24PM 15 CALLED THERANOS?

01:24PM 16 A. YES.

01:24PM 17 Q. DO YOU REMEMBER YOUR APPROXIMATE DATES OF EMPLOYMENT WITH
01:24PM 18 THE COMPANY?

01:24PM 19 A. I JOINED SEPTEMBER OF 2011 AND LEFT IN DECEMBER OF 2016.

01:24PM 20 Q. AND WHAT JOB TITLES DID YOU HAVE WHILE YOU WERE AT
01:24PM 21 THERANOS?

01:24PM 22 A. I WAS HIRED AS A SENIOR PROJECT MANAGER, AND I RECEIVED A
01:24PM 23 PROMOTION THREE YEARS LATER TO LEAD STRATEGIC OPERATIONS,
01:24PM 24 OFFICE OF THE CEO.

01:24PM 25 Q. AND I WANT TO TALK MORE ABOUT YOUR JOB RESPONSIBILITIES,

01:24PM 1 BUT FOR NOW, CAN YOU SUMMARIZE IN A FEW SENTENCES WHAT THOSE
01:24PM 2 ROLES INVOLVED?

01:24PM 3 A. AS SENIOR PRODUCT MANAGER, I SUPPORTED KEY BUSINESS
01:24PM 4 PARTNERSHIPS, INCLUDING THE WALGREENS PARTNERSHIP.

01:25PM 5 I ALSO SUPPORTED RELATIONSHIPS WITH COMPONENTS OF THE
01:25PM 6 DEPARTMENT OF DEFENSE AND SOME PHARMACEUTICAL COMPANIES.

01:25PM 7 I WORKED WITH OTHER SENIOR PRODUCT MANAGERS TO SUPPORT
01:25PM 8 WORK WITH MARKETING AND COMMUNICATIONS COMPANIES.

01:25PM 9 AND I ALSO COORDINATED TECHNOLOGY DEMONSTRATIONS.

01:25PM 10 Q. WHEN YOU LEFT THE COMPANY, DID YOU SAY THAT WAS END OF THE
01:25PM 11 YEAR 2016?

01:25PM 12 A. CORRECT.

01:25PM 13 Q. WHAT WAS THE NATURE OF YOUR DEPARTURE FROM THE COMPANY?
01:25PM 14 WERE YOU LAID OFF? WERE YOU FIRED? DID YOU QUIT?

01:25PM 15 MS. WALSH: OBJECTION. TIME PERIOD.

01:25PM 16 THE COURT: THE TIMING OF HIS -- WHEN HE LEFT?

01:25PM 17 MS. WALSH: YES.

01:25PM 18 THE COURT: DID YOU WANT TO MAYBE JUST ASK A
01:25PM 19 QUESTION ABOUT THAT, WHEN HE LEFT JUST TO CLEAR THE RECORD.

01:25PM 20 MR. BOSTIC: SURE.

01:25PM 21 IS THE CONFUSION AS TO WHEN HE LEFT?

01:25PM 22 THE COURT: I THINK SO.

01:25PM 23 BY MR. BOSTIC:

01:25PM 24 Q. MR. EDLIN, WHEN DID YOU LEAVE THE COMPANY?

01:25PM 25 A. DECEMBER 2016.

01:26PM 1 Q. AND WHY DID YOU LEAVE THE COMPANY IN DECEMBER OF 2016?

01:26PM 2 MS. WALSH: OBJECTION. RELEVANCE.

01:26PM 3 THE COURT: OVERRULED.

01:26PM 4 YOU CAN ANSWER THE QUESTION.

01:26PM 5 THE WITNESS: I LEFT THE COMPANY FOR TWO MAIN
01:26PM 6 REASONS:

01:26PM 7 ONE, I WANTED TO GO TO BUSINESS SCHOOL, WHICH I DID; AND
01:26PM 8 TWO, I NO LONGER BELIEVED, BASED ON WHAT I WAS SEEING, THAT THE
01:26PM 9 COMPANY WAS CAPABLE OF STANDING BEHIND THE CLAIMS IT HAD BEEN
01:26PM 10 MAKING ABOUT THE TECHNOLOGY.

01:26PM 11 THIS WAS ABOUT A YEAR AFTER THE FIRST
01:26PM 12 "WALL STREET JOURNAL" ARTICLE CAME OUT. IN THAT PERIOD THE
01:26PM 13 COMPANY MADE SEVERAL ATTEMPTS TO PROVE ITS TECHNOLOGY, ALL OF
01:26PM 14 WHICH WERE UNSUCCESSFUL, AND I NO LONGER WANTED TO BE IN THAT
01:26PM 15 ENVIRONMENT.

01:26PM 16 BY MR. BOSTIC:

01:26PM 17 Q. UNDERSTOOD. I'LL WANT TO FOLLOW UP WITH YOU ON THAT
01:26PM 18 DECISION AND WHAT CAME BEHIND IT LATER.

01:26PM 19 BUT FOR NOW, CAN YOU GIVE US SOME INFORMATION ABOUT YOUR
01:26PM 20 BACKGROUND, STARTING WITH YOUR EDUCATION?

01:26PM 21 A. FOR MY UNDERGRADUATE I ATTENDED DUKE UNIVERSITY AND
01:27PM 22 MAJORED IN PUBLIC POLICY AND RECEIVED A CERTIFICATE IN MARKETS
01:27PM 23 AND MANAGEMENT STUDIES.

01:27PM 24 I ALSO RECEIVED MY MASTER'S OF BUSINESS ADMINISTRATION
01:27PM 25 FROM THE UCLA ANDERSON SCHOOL OF MANAGEMENT.

01:27PM 1 Q. AND IN BETWEEN OBTAINING THOSE DEGREES AND STARTING WORK
01:27PM 2 AT THERANOS, DID YOU HAVE ANY OTHER EMPLOYMENT?

01:27PM 3 A. MY FIRST JOB OUT OF COLLEGE WAS AS AN EQUITY RESEARCH AND
01:27PM 4 SALES ASSISTANT AT TELSEY ADVISORY GROUP.

01:27PM 5 Q. AND FOR HOW LONG WERE YOU THERE?

01:27PM 6 A. ABOUT TWO YEARS.

01:27PM 7 Q. SO LET'S TALK ABOUT HOW YOU CAME TO WORK AT THERANOS.

01:27PM 8 HOW DID YOU FIRST FIND OUT ABOUT THE COMPANY?

01:27PM 9 A. I FIRST FOUND OUT ABOUT THE COMPANY THROUGH
01:27PM 10 ELIZABETH HOLMES'S BROTHER, CHRISTIAN. HE AND I ATTENDED DUKE
01:27PM 11 TOGETHER, AND HE'S ONE OF MY CLOSEST FRIENDS, AND I KNEW THAT
01:27PM 12 HIS SISTER HAD DROPPED OUT OF STANFORD TO START HER OWN
01:27PM 13 COMPANY, WHICH IS THERANOS.

01:27PM 14 Q. AND WHEN YOU FIRST HEARD ABOUT THERANOS, WAS IT IN
01:28PM 15 CONNECTION WITH THE JOB THAT YOU EVENTUALLY CAME TO HAVE, OR
01:28PM 16 DID YOU KNOW ABOUT IT BEFORE THEN?

01:28PM 17 A. I KNEW ABOUT IT BEFORE THEN.

01:28PM 18 Q. AND HOW DID YOU COME TO FIND OUT ABOUT THE POSSIBILITY
01:28PM 19 THAT YOU MIGHT WORK AT THERANOS?

01:28PM 20 A. ABOUT TWO YEARS AFTER I GRADUATED FROM COLLEGE, CHRISTIAN
01:28PM 21 MOVED TO CALIFORNIA TO WORK AT THERANOS AND I KNEW THAT HE WAS
01:28PM 22 DOING THAT.

01:28PM 23 AND THEN A FEW MONTHS LATER, HE ACTUALLY GAVE ME A CALL TO
01:28PM 24 TELL ME THAT THERE MIGHT BE AN OPPORTUNITY FOR ME TO JOIN THE
01:28PM 25 COMPANY.

01:28PM 1 Q. CAN YOU PLACE THAT IN TIME FOR US? WHAT YEAR ARE WE
01:28PM 2 TALKING ABOUT NOW?

01:28PM 3 A. THIS WAS AROUND JUNE OF 2011.

01:28PM 4 Q. AND WERE YOU INTERESTED IN THAT OPPORTUNITY?

01:28PM 5 A. I WAS. IT SOUNDED LIKE A VERY EXCITING OPPORTUNITY WITH A
01:28PM 6 LOT OF POTENTIAL. I DIDN'T RECEIVE A LOT OF INFORMATION ABOUT
01:28PM 7 IT AT THE TIME, BUT IT SOUNDED LIKE SOMETHING WORTH PURSUING.

01:29PM 8 Q. AND DID YOU PURSUE THE JOB BASED ON THAT INTEREST?

01:29PM 9 A. I DID.

01:29PM 10 Q. CAN YOU SUMMARIZE THE APPLICATION INTERVIEW PROCESS? WHAT
01:29PM 11 WERE THE STEPS INVOLVED?

01:29PM 12 A. AFTER I HAD SOME INITIAL DISCUSSIONS WITH CHRISTIAN, I WAS
01:29PM 13 INVITED TO INTERVIEW AT THERANOS'S OFFICES.

01:29PM 14 CHRISTIAN ALSO EXTENDED THE SAME OFFER TO A FEW OF OUR
01:29PM 15 OTHER CLASSMATES FROM DUKE, AND A GROUP OF US WENT TO THE
01:29PM 16 THERANOS OFFICES IN PALO ALTO TO INTERVIEW WITH SUNNY AND
01:29PM 17 ELIZABETH, BOTH IN A GROUP SETTING AND ALSO ONE-ON-ONE.

01:29PM 18 Q. AND APPROXIMATELY HOW MANY PEOPLE ARE WE TALKING ABOUT IN
01:29PM 19 THIS GROUP OF COLLEGE CLASSMATES WHO WERE INTERVIEWING FOR THIS
01:29PM 20 JOB AT THERANOS, OR THESE JOBS AT THERANOS?

01:29PM 21 A. I THINK THERE WERE FOUR OTHER PEOPLE INITIALLY, AND THEN
01:29PM 22 ABOUT A YEAR LATER ANOTHER GENTLEMAN JOINED.

01:29PM 23 Q. AS PART OF THAT INTERVIEW PROCESS, DID YOU HAVE
01:29PM 24 CONVERSATIONS WITH MR. BALWANI AND MS. HOLMES?

01:29PM 25 A. YES.

01:29PM 1 Q. AND DID YOU SPEAK TO THEM SEPARATELY OR TOGETHER, IF YOU
01:30PM 2 REMEMBER?

01:30PM 3 A. I REMEMBER SPEAKING WITH THEM TOGETHER IN A GROUP SETTING
01:30PM 4 WITH THE OTHER PEOPLE WHO JOINED AS SENIOR PRODUCT MANAGERS,
01:30PM 5 AND THEN I HAD A TWO-ON-ONE DISCUSSION, SO I MET WITH ELIZABETH
01:30PM 6 AND SUNNY.

01:30PM 7 Q. AND EVENTUALLY WERE YOU OFFERED A POSITION AT THERANOS?

01:30PM 8 A. YES.

01:30PM 9 Q. AND YOU ACCEPTED?

01:30PM 10 A. CORRECT.

01:30PM 11 Q. AT THE TIME THAT YOU FIRST STARTED AT THE COMPANY, WHAT
01:30PM 12 WAS YOUR UNDERSTANDING OF WHAT BUSINESS THE COMPANY WAS IN?

01:30PM 13 A. I UNDERSTOOD THAT THE COMPANY WAS IN THE LABORATORY
01:30PM 14 TECHNOLOGY OR HEALTH CARE TECHNOLOGY BUSINESS, AND THAT THE
01:30PM 15 COMPANY'S MISSION WAS TO MAKE ACCESS TO LAB TESTING MORE
01:30PM 16 ACCESSIBLE TO PATIENTS, AND THAT THE PROPRIETARY UNDERLYING
01:30PM 17 TECHNOLOGY WAS CONNECTED TO BEING ABLE TO DO LABORATORY TESTING
01:30PM 18 ON A FINGERSTICK AND SMALL AMOUNT OF BLOOD.

01:30PM 19 Q. WHEN YOU WERE FIRST HIRED AT THE COMPANY, YOUR JOB TITLE
01:31PM 20 WAS SENIOR PROJECT MANAGER YOU SAID?

01:31PM 21 A. CORRECT.

01:31PM 22 Q. CAN YOU DESCRIBE HOW THAT POSITION FITS INTO THE OVERALL
01:31PM 23 ORGANIZATION OF THE COMPANY?

01:31PM 24 A. SO I JOINED A PRODUCT MANAGEMENT TEAM THAT ALREADY
01:31PM 25 EXISTED, AND WHEN I JOINED, I REPORTED DIRECTLY TO

01:31PM 1 CHRISTIAN HOLMES, WHO WAS THE TEAM LEAD, AND THEN CHRISTIAN
01:31PM 2 REPORTED UP TO SUNNY.

01:31PM 3 Q. AND FROM YOUR TIME AT THE COMPANY, DID YOU COME TO
01:31PM 4 UNDERSTAND HOW MR. BALWANI AND MS. HOLMES FIT INTO THE OVERALL
01:31PM 5 ORGANIZATION OF THE COMPANY?

01:31PM 6 A. YES.

01:31PM 7 Q. HOW WOULD YOU DESCRIBE THEIR ROLES?

01:31PM 8 A. SO ELIZABETH WAS THE CEO, AND SUNNY WAS THE PRESIDENT AND
01:31PM 9 COO.

01:31PM 10 Q. OKAY. YOU MENTIONED THAT AT THE BEGINNING YOU WERE
01:32PM 11 REPORTING TO CHRISTIAN HOLMES. IS THAT MS. HOLMES'S YOUNGER OR
01:32PM 12 OLDER BROTHER, IF YOU KNOW?

01:32PM 13 A. YOUNGER BROTHER.

01:32PM 14 Q. DID THERE COME A TIME WHEN YOUR REPORTING OBLIGATIONS
01:32PM 15 CHANGED?

01:32PM 16 A. YES.

01:32PM 17 Q. AND WHEN DID THAT HAPPEN AND HOW DID IT CHANGE?

01:32PM 18 A. THAT HAPPENED WHEN I RECEIVED MY PROMOTION AT THE END OF
01:32PM 19 2014. SO THAT BEGAN IN JANUARY OF 2015.

01:32PM 20 AND AT THAT TIME I REPORTED DIRECTLY TO ELIZABETH HOLMES.

01:32PM 21 Q. AND HOW DID YOUR JOB RESPONSIBILITIES CHANGE WITH THAT
01:32PM 22 PROMOTION? AND IF YOU CAN START BY GIVING US YOUR NEW TITLE
01:32PM 23 FOLLOWING THE PROMOTION?

01:32PM 24 A. MY NEW TITLE FOLLOWING THE PROMOTION WAS LEAD OF STRATEGIC
01:32PM 25 OPERATIONS, OFFICE OF THE CEO.

01:32PM 1 THE MAJORITY OF MY JOB RESPONSIBILITIES REMAINED, ALTHOUGH
01:32PM 2 AT THAT POINT IN TIME THE WALGREENS PARTNERSHIP AND OPERATION
01:32PM 3 HAD REALLY GOTTEN OFF THE GROUND, SO I SPENT LESS OF MY TIME
01:33PM 4 WORKING ON THAT.

01:33PM 5 AND THERE WAS ALSO AN OPERATIONAL COMPONENT TO THE NEW
01:33PM 6 ROLE WHERE I WORKED WITH OTHER MEMBERS OF THE OFFICE OF THE CEO
01:33PM 7 TO MAKE SURE THAT ANY PROJECTS OR REQUESTS REQUIRED ELIZABETH'S
01:33PM 8 FEEDBACK OR ATTENTION WERE RESPONDED TO IN A TIMELY FASHION.

01:33PM 9 Q. I'D LIKE TO ASK YOU ABOUT THAT ROLE AND HOW FREQUENTLY IT
01:33PM 10 REQUIRED YOU TO INTERACT WITH MS. HOLMES AND MR. BALWANI, SO
01:33PM 11 LET'S BREAK THOSE UP.

01:33PM 12 FIRST OF ALL, HOW FREQUENTLY WERE YOU IN CONTACT WITH
01:33PM 13 MS. HOLMES IN THAT ROLE AT THE COMPANY?

01:33PM 14 A. THE SECOND ROLE?

01:33PM 15 Q. YES.

01:33PM 16 A. GENERALLY ON A DAILY BASIS.

01:33PM 17 Q. AND WERE YOU REPORTING DIRECTLY TO HER AT THAT TIME?

01:33PM 18 A. YES.

01:33PM 19 Q. AND HOW ABOUT MR. BALWANI? HOW FREQUENTLY WERE YOU IN
01:33PM 20 CONTACT WITH HIM DURING THAT TIME PERIOD?

01:33PM 21 AND I GUESS WE'RE TALKING ABOUT FROM 2015 ON.

01:33PM 22 A. IT WAS NOT NEARLY AS FREQUENT.

01:34PM 23 Q. AND IF YOU COULD TRY TO QUANTIFY IT FOR US, WAS IT WEEKLY?
01:34PM 24 MONTHLY? SOMETHING ELSE?

01:34PM 25 A. I THINK WEEKLY OR BIWEEKLY.

01:34PM 1 Q. HOW ABOUT FOR THE TIME PERIOD BEFORE YOUR PROMOTION? SO
01:34PM 2 IF WE'RE TALKING ABOUT 2012 THROUGH 2014, HOW FREQUENTLY DID
01:34PM 3 YOU HAVE CONTACT WITH MR. BALWANI DURING THAT TIME PERIOD?

01:34PM 4 A. I HAD CONTACT WITH MR. BALWANI MORE FREQUENTLY IN THAT
01:34PM 5 TIME PERIOD MAINLY AROUND THE WALGREENS PARTNERSHIP, WHEN THE
01:34PM 6 WALGREENS OPERATION BECAUSE SUNNY KIND OF OVERSAW THAT
01:34PM 7 RELATIONSHIP, AND AT THE TIME THAT'S WHERE I SPENT MOST OF MY
01:34PM 8 TIME.

01:34PM 9 Q. CAN YOU TELL US MORE ABOUT THAT? WHAT WAS YOUR ROLE IN
01:34PM 10 CONNECTION WITH THE WALGREENS PARTNERSHIP, AND WHY DID THAT
01:34PM 11 ENTAIL FREQUENT CONTACT WITH THE DEFENDANT, MR. BALWANI?

01:34PM 12 A. IN MY ROLE I WORKED WITH THE OTHER SENIOR PRODUCT MANAGERS
01:35PM 13 TO OPERATIONALIZE AND PLAN WHAT THE WALGREENS OPERATION WOULD
01:35PM 14 LOOK LIKE, AND THAT INCLUDED MAINLY THE FRONT END CUSTOMER
01:35PM 15 EXPERIENCE PROCESS FOR PATIENTS AS THEY ENTERED A THERANOS
01:35PM 16 WELLNESS CENTER AND HAD THEIR SAMPLES COLLECTED IN THAT STORE.

01:35PM 17 THERE WERE ALSO A NUMBER OF OTHER ASPECTS, INCLUDING
01:35PM 18 SOFTWARE DEVELOPMENT AND APPLICATIONS THAT WERE USED BY
01:35PM 19 PHARMACISTS AND TECHNICIANS IN THE WALGREENS STORES IN THE
01:35PM 20 WELLNESS CENTERS TO CHECK PATIENTS IN, RUN THEIR INSURANCE,
01:35PM 21 EVALUATE THEIR LAB FORMS.

01:35PM 22 AND THEN THERE WAS ALSO ANOTHER SOFTWARE APPLICATION THAT
01:35PM 23 HELPED THE TECHNICIANS UNDERSTAND WHAT TUBES THEY NEEDED TO
01:35PM 24 COLLECT CERTAIN SAMPLES BASED ON THE PARTICULAR LAB ORDER.

01:35PM 25 Q. DURING YOUR TIME AT THE COMPANY, DID YOU GET A SENSE FOR

01:36PM 1 HOW INFORMATION MOVED AROUND THE COMPANY? AND IN PARTICULAR

01:36PM 2 I'M ASKING ABOUT WHETHER THE FLOW OF INFORMATION WAS RESTRICTED

01:36PM 3 WITHIN THERANOS?

01:36PM 4 A. YES.

01:36PM 5 Q. WHAT WAS YOUR SENSE THERE?

01:36PM 6 A. THE FLOW OF INFORMATION WAS GENERALLY RESTRICTED, AND WHAT

01:36PM 7 I MEAN BY THAT IS CERTAIN INFORMATION WOULD NOT GET SHARED

01:36PM 8 OUTSIDE OF THE PARTICULAR TEAM TO WHICH THAT INFORMATION

01:36PM 9 APPLIED.

01:36PM 10 Q. AND HOW DID YOU COME TO UNDERSTAND THAT THAT WAS THE WAY

01:36PM 11 OF THINGS AT THERANOS?

01:36PM 12 A. THAT'S WHAT I WAS TOLD BY MY SUPERVISORS.

01:36PM 13 Q. AND WHO ARE WE TALKING ABOUT, THE PEOPLE WHO TOLD YOU THAT

01:36PM 14 INFORMATION WAS TO BE RESTRICTED THAT WAY?

01:36PM 15 A. THAT INCLUDED CHRISTIAN, ELIZABETH, AND SUNNY.

01:36PM 16 Q. YOU HEARD DIRECTION LIKE THAT FROM ALL THREE OF THOSE

01:36PM 17 INDIVIDUALS?

01:36PM 18 A. CORRECT.

01:36PM 19 Q. SO FAR WE'VE BEEN TALKING ABOUT THE WAY THE INFORMATION

01:37PM 20 MOVED BETWEEN DIFFERENT EMPLOYEES WITHIN THE COMPANY; CORRECT?

01:37PM 21 A. RIGHT.

01:37PM 22 Q. AND HOW ABOUT THE FLOW OF INFORMATION FROM INSIDE OF THE

01:37PM 23 COMPANY TO OUTSIDE? DID YOU GET DIRECTION ABOUT KEEPING

01:37PM 24 INFORMATION WITHIN THE COMPANY AND NOT PUBLICLY DISCLOSING IT?

01:37PM 25 A. YES, THAT INFORMATION WAS ALSO RESTRICTED FROM BEING SENT

01:37PM 1 OUTSIDE OF THE COMPANY.

01:37PM 2 MY UNDERSTANDING WAS THAT NO INFORMATION SHOULD BE SHARED
01:37PM 3 OUTSIDE OF THE COMPANY UNLESS IT WAS APPROVED, AND IN MY CASE
01:37PM 4 THAT WOULD HAVE BEEN APPROVED BY CHRISTIAN, ELIZABETH, OR
01:37PM 5 SUNNY.

01:37PM 6 Q. WHEN WE ARE TALKING ABOUT RESTRICTIONS ON FLOW OF
01:37PM 7 INFORMATION WITHIN THE COMPANY, WAS THERE ANYONE AT THE COMPANY
01:37PM 8 TO WHOM THOSE RESTRICTIONS DID NOT APPLY?

01:37PM 9 IN OTHER WORDS, WERE THERE PEOPLE AT THE COMPANY WHO WERE
01:37PM 10 ALLOWED TO KNOW ANYTHING, WHO DIDN'T HAVE RESTRICTIONS ON WHAT
01:37PM 11 THEY COULD KNOW?

01:37PM 12 A. YES.

01:37PM 13 Q. AND WHO FELL INTO THAT CATEGORY?

01:38PM 14 A. ELIZABETH AND SUNNY.

01:38PM 15 Q. SO BASED ON YOUR TIME AT THE COMPANY, WAS THERE ANY
01:38PM 16 INFORMATION THAT YOU UNDERSTOOD COULD NOT BE SHARED WITH EITHER
01:38PM 17 MS. HOLMES OR WITH MR. BALWANI?

01:38PM 18 A. THAT WAS NOT MY EXPERIENCE.

01:38PM 19 Q. AND BASED ON YOUR UNDERSTANDING, WAS THERE ANYONE ELSE
01:38PM 20 WITHIN THAT CATEGORY, THE CATEGORY OF PEOPLE WHO WERE ALLOWED
01:38PM 21 TO KNOW EVERYTHING THAT WAS HAPPENING AT THE COMPANY?

01:38PM 22 A. NO.

01:38PM 23 MR. BOSTIC: YOUR HONOR, I WASN'T SURE IF THE COURT
01:38PM 24 WANTED TO TAKE A BREAK AT 2:00 P.M. OR SOONER.

01:38PM 25 THE COURT: I THOUGHT WE WOULD TAKE A BREAK AT 2:00

01:38PM 1 P.M., LADIES AND GENTLEMEN.

01:38PM 2 MR. BOSTIC: UNDERSTOOD.

01:38PM 3 Q. MR. EDLIN, WHILE WORKING AT THE COMPANY, DID YOU HAVE
01:38PM 4 OPPORTUNITIES TO OBSERVE MS. HOLMES AND MR. BALWANI'S WORKING
01:38PM 5 RELATIONSHIP?

01:38PM 6 A. YES.

01:38PM 7 Q. LET ME ASK A FEW QUESTIONS ABOUT THAT.

01:38PM 8 FIRST OF ALL, WHEN IT CAME TO THEIR POSITIONS AT THE
01:39PM 9 COMPANY, WERE THEY COEQUALS? WAS ONE ABOVE THE OTHER IN THE
01:39PM 10 ORGANIZATIONAL CHART?

01:39PM 11 WHAT WAS YOUR UNDERSTANDING THERE?

01:39PM 12 A. ASIDE FROM THE TITLES, I DID NOT REALLY SEE A DISTINCTION.

01:39PM 13 Q. DO YOU MEAN TO SAY THAT THEY OPERATED AS EQUALS?

01:39PM 14 A. YES, I THINK THAT'S A FAIR CHARACTERIZATION.

01:39PM 15 Q. TELL ME ABOUT THAT. WHAT MAKES YOU SAY THAT?

01:39PM 16 A. IN MY EXPERIENCE, I SAW THE TWO OF THEM WORK VERY CLOSELY
01:39PM 17 TOGETHER ON A DAILY BASIS.

01:39PM 18 THEY WERE ALWAYS IN EACH OTHER'S OFFICES EITHER HAVING
01:39PM 19 LUNCH OR HAVING OTHER CONVERSATIONS.

01:39PM 20 FROM MY VANTAGE POINT, I RECEIVED DIRECTION AND UNDERSTOOD
01:39PM 21 THAT THEY BOTH HAD AN UNDERSTANDING OF THE OVERALL STRATEGY FOR
01:39PM 22 THE COMPANY.

01:39PM 23 Q. AND TELL ME ABOUT -- YOU MENTIONED YOUR VANTAGE POINT.

01:40PM 24 HOW DID YOU HAVE A CHANCE TO SEE THESE TWO WORKING
01:40PM 25 TOGETHER?

01:40PM 1 A. VISUALLY THEIR OFFICES HAD GLASS WINDOWS AND DOORS, SO I
01:40PM 2 WOULD ALWAYS BE ABLE TO SEE INSIDE OF THEIR OFFICES, AS ANYONE
01:40PM 3 ELSE WOULD.

01:40PM 4 Q. AND DOES THAT HAVE SOMETHING TO DO WITH WHERE YOUR WORK
01:40PM 5 STATION WAS IN RELATION TO THEIR OFFICES?

01:40PM 6 A. YES.

01:40PM 7 Q. AND WHERE WAS YOUR WORK STATION?

01:40PM 8 A. I SAT IN A POD OF DESKS OUTSIDE OF THEIR OFFICES, OR CLOSE
01:40PM 9 TO THEIR OFFICES.

01:40PM 10 Q. AND BESIDES SITTING NEAR THEIR OFFICES AND BEING ABLE TO
01:40PM 11 SEE THEM WORKING, DID YOUR WORK ALSO INVOLVE CONTACT WITH THE
01:40PM 12 TWO OF THEM?

01:40PM 13 A. YES.

01:40PM 14 Q. WHEN IT CAME TO THE RESPONSIBILITIES OF MS. HOLMES AND
01:40PM 15 MR. BALWANI, DID YOU OBSERVE THEM COLLABORATING REGULARLY AT
01:41PM 16 THE COMPANY OR DID THEY TEND TO WORK SEPARATELY? WHAT DID YOU
01:41PM 17 SEE IN THAT REGARD?

01:41PM 18 A. I THINK THERE WAS A MIX. THERE WERE CERTAIN AREAS THAT
01:41PM 19 EACH OF THEM FOCUSSED ON, AND THERE WERE OTHER AREAS WHERE IT
01:41PM 20 SEEMED MORE COLLABORATIVE.

01:41PM 21 Q. DID YOU EVER HAVE A CHANCE TO SEE AN INSTANCE WHERE THE
01:41PM 22 TWO OF THEM DISAGREED ABOUT SOMETHING THAT HAPPENED AT
01:41PM 23 THERANOS?

01:41PM 24 A. THERE WERE A NUMBER OF TIMES WHERE THERE WOULD BE A LIVELY
01:41PM 25 DISCUSSION ABOUT A CERTAIN STRATEGY OR A CERTAIN APPROACH, AND

01:41PM 1 I THINK AS PART OF A HEALTHY DISCUSSION THERE WAS SOME
01:41PM 2 DISAGREEMENT AT TIMES, YES.

01:41PM 3 Q. AND DESPITE SEEING THAT AGREEMENT, IS IT STILL YOUR
01:41PM 4 TESTIMONY THAT THEY TENDED TO COLLABORATE AND AGREE ON THINGS?

01:41PM 5 A. YES.

01:41PM 6 Q. YOU TALKED ABOUT A ROLE THAT YOU HAD IN CONNECTION WITH
01:41PM 7 THE OPERATIONALIZATION OF THE TESTING AT WALGREENS; IS THAT
01:42PM 8 CORRECT?

01:42PM 9 A. YES.

01:42PM 10 Q. IN CONNECTION WITH THAT ROLE, DID YOU COME TO UNDERSTAND
01:42PM 11 GENERALLY WHAT KINDS OF DEVICES THE COMPANY WAS USING FOR BLOOD
01:42PM 12 TESTING?

01:42PM 13 A. YES.

01:42PM 14 Q. WHEN AND HOW DID YOU COME TO UNDERSTAND WHAT ANALYZERS THE
01:42PM 15 COMPANY WAS USING?

01:42PM 16 A. I CAME TO UNDERSTAND THIS OVER A PERIOD OF TIME FROM WHEN
01:42PM 17 I JOINED THE COMPANY UP UNTIL THE LAST YEAR THAT I LEFT, AND
01:42PM 18 OVER THAT TIME I LEARNED MORE.

01:42PM 19 INITIALLY I WAS EXPOSED TO THE EDISON 3.0 VERSION OF THE
01:42PM 20 DEVICE MAINLY IN MY WORK SUPPORTING SOME OF THE PHARMACEUTICAL
01:42PM 21 AND MILITARY RELATIONSHIPS THAT THE COMPANY HAD.

01:42PM 22 AND THEN OVER TIME ADDITIONAL DEVICES WERE INCORPORATED
01:43PM 23 INTO THE TECHNOLOGY DEMONSTRATIONS, AND THAT'S HOW I LEARNED
01:43PM 24 ABOUT THOSE DEVICES.

01:43PM 25 Q. OKAY. I'D LIKE TO BREAK THAT OUT A LITTLE BIT.

01:43PM 1 YOU MENTIONED THE EDISON 3.0 DEVICE; IS THAT RIGHT?

01:43PM 2 A. YES.

01:43PM 3 Q. DID YOU HAVE AN UNDERSTANDING IN 2013 AND 2014 AS TO

01:43PM 4 GENERALLY WHAT THAT DEVICE COULD DO AND WHAT IT COULDN'T DO?

01:43PM 5 A. I DON'T THINK SO.

01:43PM 6 Q. SO, FOR EXAMPLE, DID YOU KNOW HOW MANY DIFFERENT KINDS OF

01:43PM 7 TESTS THE EDISON 3.0 COULD RUN?

01:43PM 8 A. NO.

01:43PM 9 Q. DID YOU KNOW WHETHER THERE WAS A SPECIFIC CATEGORY OF

01:43PM 10 TESTS THAT THE EDISON WAS LIMITED TO?

01:43PM 11 A. I DON'T BELIEVE SO.

01:43PM 12 Q. AND IS THAT BECAUSE YOUR JOB OR YOUR ROLE DIDN'T REQUIRE

01:43PM 13 YOU TO KNOW THAT INFORMATION?

01:43PM 14 A. CORRECT.

01:43PM 15 Q. AND YOU TESTIFIED THAT YOUR UNDERSTANDING OF WHAT DEVICES

01:43PM 16 THERANOS WAS USING CHANGED OVER TIME UP UNTIL THE END OF YOUR

01:44PM 17 TIME WITH THE COMPANY; IS THAT RIGHT?

01:44PM 18 A. YES.

01:44PM 19 Q. WHAT WERE SOME OF THE THINGS THAT YOU LEARNED ABOUT THE

01:44PM 20 COMPANY'S DEVICES TOWARDS THE END OF YOUR TIME WORKING AT

01:44PM 21 THERANOS?

01:44PM 22 MS. WALSH: OBJECTION. RELEVANCE.

01:44PM 23 THE COURT: OVERRULED.

01:44PM 24 BY MR. BOSTIC:

01:44PM 25 Q. WOULD YOU LIKE THE QUESTION AGAIN, MR. EDLIN?

01:44PM 1 A. YES, PLEASE.

01:44PM 2 Q. THE QUESTION WAS, WHAT WERE SOME OF THE THINGS THAT YOU
01:44PM 3 LEARNED ABOUT THE DEVICES THAT THE COMPANY WAS USING TOWARDS
01:44PM 4 THE END OF YOUR TIME THERE?

01:44PM 5 A. WELL, IN 2016 I LEARNED THAT THE COMPANY HAD BEEN USING
01:44PM 6 THIRD PARTY DEVICES TO RUN FINGERSTICK SAMPLES, AND I ALSO
01:44PM 7 LEARNED IN THAT TIME THAT ONLY ONE VERSION OF THE THERANOS
01:44PM 8 DEVICE HAD BEEN USED FOR CLINICAL PATIENT SAMPLES.

01:44PM 9 Q. AND YOU HAVE A MEMORY OF LEARNING THAT IN 2016?

01:44PM 10 A. WELL, I FIRST HEARD ABOUT IT AT THE END OF 2015 IN "THE
01:44PM 11 WALL STREET JOURNAL" ARTICLE, AND I ATTENDED MEETINGS WHERE
01:45PM 12 THAT MATERIAL WAS DISCUSSED IN 2016, AND THAT'S WHEN I WOULD
01:45PM 13 SAY I LEARNED IT.

01:45PM 14 Q. SO IN 2013, AROUND THE TIME OF THE WALGREENS ROLLOUT, EVEN
01:45PM 15 IN YOUR ROLE IN CONNECTION WITH THAT ROLLOUT AND IN YOUR ROLE
01:45PM 16 AS A PRODUCT MANAGER, YOU WEREN'T AWARE OF THE COMPANY'S USE OF
01:45PM 17 THIRD PARTY DEVICES FOR TESTING?

01:45PM 18 MS. WALSH: OBJECTION. ASKED AND ANSWERED.

01:45PM 19 THE COURT: OVERRULED.

01:45PM 20 DO YOU UNDERSTAND THE QUESTION?

01:45PM 21 THE WITNESS: CAN YOU REPEAT THE QUESTION, PLEASE?

01:45PM 22 MR. BOSTIC: SURE.

01:45PM 23 Q. THE QUESTION WAS, EVEN IN THE ROLE THAT YOU HAD IN
01:45PM 24 CONNECTION WITH THE WALGREENS ROLLOUT AND YOUR ROLE AS A
01:45PM 25 PRODUCT MANAGER, YOU DIDN'T KNOW IN 2013 AND 2014 THAT THERANOS

01:45PM 1 WAS RELYING ON THIRD PARTY DEVICES?

01:45PM 2 A. CORRECT.

01:45PM 3 Q. YOU MENTIONED THE EDISON 3 SERIES.

01:45PM 4 DID YOU LATER COME TO BE FAMILIAR WITH ANOTHER GENERATION
01:45PM 5 OF THERANOS ANALYZERS?

01:45PM 6 A. YES.

01:45PM 7 Q. AND CAN YOU TELL US ABOUT WHAT THOSE WERE AND HOW YOU
01:46PM 8 FOUND OUT ABOUT THEM?

01:46PM 9 A. SO THE EDISON DEVICES WERE CONSIDERED THE 3 SERIES; THE
01:46PM 10 NEXT GENERATION DEVICES WERE CONSIDERED THE 4 SERIES; AND THERE
01:46PM 11 WERE THREE VARIATIONS OF THESE DEVICES, AND MY UNDERSTANDING
01:46PM 12 WAS THAT THESE DEVICES HAD THE CAPABILITY TO RUN ANY LAB TEST.

01:46PM 13 Q. AND HOW DID YOU COME TO KNOW ABOUT THESE DEVICES?

01:46PM 14 A. I FIRST LEARNED ABOUT THESE DEVICES AS PART OF THE
01:46PM 15 PLANNING WORK WITH THE DEPARTMENT OF DEFENSE.

01:46PM 16 Q. AND THE DEVICES WE'RE TALKING ABOUT, I THINK YOU MENTIONED
01:46PM 17 THERE WERE THREE DIFFERENT VERSIONS OF THAT GENERATION.

01:46PM 18 CAN YOU WALK US THROUGH WHAT THOSE WERE?

01:46PM 19 A. YES. SO THE FIRST VERSION WAS INITIALLY CALLED THE
01:46PM 20 MINILAB, AND THAT DEVICE WAS ABOUT FOUR OR FIVE FEET TALL AND
01:47PM 21 IT CONSISTED OF THE COMPONENTS OF FOUR OR FIVE DIFFERENT
01:47PM 22 DEVICES STACKED ON TOP OF ONE ANOTHER.

01:47PM 23 AND THE OTHER VERSIONS WERE -- ONE WAS REFERRED TO AS A
01:47PM 24 4.0 MONOBAY, AND THAT WAS INTENDED FOR ONE SAMPLE AT A TIME.

01:47PM 25 AND THEN THE 4S WAS A SMALLER VERSION OF THE MONOBAY.

01:47PM 1 Q. THE DEVICES THAT WE'RE TALKING ABOUT NOW, WERE THEY EVER
01:47PM 2 USED FOR CLINICAL PATIENT TESTING AT THERANOS TO YOUR
01:47PM 3 KNOWLEDGE?

01:47PM 4 A. NO.

01:47PM 5 Q. IN CONTRAST, THE EDISON THAT WE TALKED ABOUT BEFORE, THE
01:47PM 6 EDISON 3.0, WAS THAT USED FOR ACTUAL CLINICAL PATIENT TESTING?

01:47PM 7 A. YES.

01:47PM 8 Q. AND I WANT TO BE CLEAR, WHEN WE'RE TALKING ABOUT THE --
01:47PM 9 THESE NEXT GENERATION DEVICES, THE 4 SERIES THAT YOU MENTIONED,
01:47PM 10 WERE THEY USED FOR CLINICAL PATIENT TESTING AT ANY POINT IN
01:48PM 11 YOUR TIME AT THE COMPANY, INCLUDING AS LATE AS 2015 AND 2016?

01:48PM 12 A. NO.

01:48PM 13 Q. WE TALKED A MINUTE AGO ABOUT RESTRICTIONS ON FLOW OF
01:48PM 14 INFORMATION WITHIN THE COMPANY, WITHIN THERANOS.

01:48PM 15 LET ME ASK YOU ABOUT THAT SPECIFICALLY IN TERMS OF THE USE
01:48PM 16 OF THIRD PARTY DEVICES.

01:48PM 17 TO YOUR KNOWLEDGE, WAS THE COMPANY'S USE OF THIRD PARTY
01:48PM 18 DEVICES PUBLIC IN 2013 AND 2014?

01:48PM 19 A. I DON'T BELIEVE SO.

01:48PM 20 Q. AND WE TALKED ABOUT CATEGORIES OF INFORMATION THAT WERE
01:48PM 21 RESTRICTED AT THERANOS. DID YOU UNDERSTAND THAT THE USE OF
01:48PM 22 THIRD PARTY DEVICES FELL INTO THAT CATEGORY, A CATEGORY OF
01:49PM 23 INFORMATION THAT SHOULD NOT BE SHARED WITHIN OR OUTSIDE OF THE
01:49PM 24 COMPANY?

01:49PM 25 MS. WALSH: OBJECTION. LEADING.

01:49PM 1 THE COURT: SUSTAINED.

01:49PM 2 YOU CAN REPHRASE IT.

01:49PM 3 BY MR. BOSTIC:

01:49PM 4 Q. LET ME ASK, DID YOU HAVE AN UNDERSTANDING AS TO WHETHER
01:49PM 5 THE USE OF THIRD PARTY DEVICES WAS A CONFIDENTIAL FACT AT
01:49PM 6 THERANOS OR WHETHER IT COULD BE SHARED FREELY OUTSIDE OF THE
01:49PM 7 COMPANY?

01:49PM 8 A. I DON'T BELIEVE IT COULD HAVE BEEN SHARED FREELY.

01:49PM 9 Q. WHEN YOU FOUND OUT ABOUT THE COMPANY'S USE OF THIRD PARTY
01:49PM 10 DEVICES, DID YOU BECOME AWARE OF THE COMPANY'S USE OF BOTH
01:49PM 11 MODIFIED THIRD PARTY DEVICES AND ALSO UNMODIFIED THIRD PARTY
01:49PM 12 DEVICES?

01:49PM 13 A. I'M SORRY, CAN YOU REPEAT THE BEGINNING OF THAT QUESTION?

01:49PM 14 Q. SURE. WHEN YOU DID FIND OUT ABOUT THE COMPANY'S USE OF
01:49PM 15 THIRD PARTY DEVICES, DID YOU FIND OUT ABOUT THE USE OF MODIFIED
01:49PM 16 AND UNMODIFIED DEVICES?

01:49PM 17 A. YES.

01:49PM 18 Q. AND WHEN WE'RE TALKING ABOUT THE CONFIDENTIALITY REGARDING
01:50PM 19 THAT TOPIC AS YOU UNDERSTOOD IT, WAS THERE A DIFFERENCE THERE?
01:50PM 20 OR DID THOSE CONFIDENTIALITY OBLIGATIONS APPLY BOTH TO THE
01:50PM 21 MODIFIED DEVICES AND ALSO THE UNMODIFIED DEVICES?

01:50PM 22 A. THERE WAS A POINT IN TIME AROUND JULY 2017 WHERE I BELIEVE
01:50PM 23 THAT ALL ASPECTS OF THE THERANOS TECHNOLOGY BECAME PUBLIC
01:50PM 24 INFORMATION, THIS WAS SHARED AT A CONFERENCE.

01:50PM 25 SO UP UNTIL THAT POINT, I DON'T BELIEVE THAT THAT WAS

01:50PM 1 PUBLIC INFORMATION, BUT I THINK AFTERWARD IT WAS.

01:50PM 2 Q. AND CAN YOU HELP US NAIL THAT DOWN IN TIME? DID YOU
01:50PM 3 MENTION A MONTH OR A YEAR?

01:50PM 4 A. I BELIEVE IT WAS JULY OF 2016.

01:50PM 5 Q. SO BEFORE THAT YOUR UNDERSTANDING WOULD HAVE BEEN THAT ALL
01:50PM 6 OF THESE FACTS WOULD HAVE BEEN RESTRICTED AND SHOULD HAVE BEEN
01:50PM 7 KEPT WITHIN THERANOS?

01:50PM 8 A. RIGHT.

01:50PM 9 Q. AS PART OF YOUR JOB AT THE COMPANY, DID YOU HANDLE TOURS
01:51PM 10 OF THE THERANOS FACILITIES?

01:51PM 11 A. SOMETIMES.

01:51PM 12 Q. WHO ELSE DID THAT WORK? WHO ELSE WAS INVOLVED IN
01:51PM 13 PROVIDING TOURS OF THE FACILITIES FOR VIP VISITORS, FOR
01:51PM 14 EXAMPLE?

01:51PM 15 A. IN MY EXPERIENCE IT WAS MAINLY ELIZABETH.

01:51PM 16 Q. WAS MR. BALWANI ALSO INVOLVED IN SOME OF THOSE TOURS?

01:51PM 17 A. SOME OF THEM, YES.

01:51PM 18 Q. AND WHEN IT CAME TO TOURS, WHICH PORTIONS OF THE
01:51PM 19 FACILITIES DID YOU GIVE TOURS TO VIP'S TO?

01:51PM 20 A. THE GENERAL WORKING SPACE FOR DIFFERENT EMPLOYEES AND THE
01:51PM 21 R&D LABS.

01:51PM 22 Q. WAS THE R&D LAB WHERE, FOR EXAMPLE, THE NEXT GENERATION
01:51PM 23 DEVICES THAT WE TALKED ABOUT WERE BEING WORKED ON?

01:51PM 24 MS. WALSH: OBJECTION. LEADING.

01:51PM 25 THE COURT: OVERRULED.

01:51PM 1 THE WITNESS: I DO RECALL SEEING THOSE DEVICES IN
01:52PM 2 THE R&D LAB.
01:52PM 3 BY MR. BOSTIC:
01:52PM 4 Q. HOW ABOUT THE CLINICAL LAB WHERE THE PREVIOUS GENERATION
01:52PM 5 DEVICES WERE BEING USED FOR PATIENT TESTING? DID YOU EVER GIVE
01:52PM 6 A TOUR OF THE CLINICAL LAB DURING YOUR TIME AT THE COMPANY?
01:52PM 7 A. NO.
01:52PM 8 Q. AND WHOSE DECISION WAS IT WHO GOT TO SEE WHAT AT THE
01:52PM 9 COMPANY? WHO CONTROLLED WHERE THOSE TOURS WENT AND WHAT WAS
01:52PM 10 COVERED?
01:52PM 11 A. ELIZABETH AND SUNNY.
01:52PM 12 Q. DO YOU REMEMBER AN OCCASION DURING YOUR TIME AT THE
01:52PM 13 COMPANY WHERE REPRESENTATIVES FROM WALGREENS CAME TO TOUR THE
01:52PM 14 THERANOS FACILITIES?
01:52PM 15 A. YES.
01:52PM 16 Q. AND IN ADVANCE OF THAT VISIT, WERE YOU ASKED TO PREPARE
01:52PM 17 ANY AREAS FOR THEM TO SEE?
01:52PM 18 A. YES.
01:52PM 19 Q. WHAT DO YOU REMEMBER ABOUT THAT?
01:52PM 20 A. I REMEMBER THAT THERE WAS A ROOM ADJACENT TO THE CLINICAL
01:52PM 21 LAB AND ELIZABETH ASKED THAT I WORK WITH DANIEL YOUNG, WHO WAS
01:53PM 22 A HEAD SCIENTIST AT THERANOS, TO SET UP SEVERAL MINILAB DEVICES
01:53PM 23 IN THAT ROOM.
01:53PM 24 Q. CAN YOU HELP US PLACE THIS IN TIME, FIRST OF ALL?
01:53PM 25 DO YOU REMEMBER WHAT YEAR APPROXIMATELY THIS WOULD HAVE

01:53PM 1 BEEN?

01:53PM 2 A. 2013.

01:53PM 3 Q. AND DURING THIS TIME PERIOD, WERE THOSE DEVICES BEING USED

01:53PM 4 AT ALL FOR PATIENT TESTING?

01:53PM 5 A. NO.

01:53PM 6 Q. BECAUSE WE'RE TALKING ABOUT THE MINILAB, THE NEXT

01:53PM 7 GENERATION DEVICE; IS THAT RIGHT?

01:53PM 8 A. CORRECT.

01:53PM 9 Q. WERE THERE ANY OTHER INSTRUCTIONS THAT YOU RECEIVED IN

01:53PM 10 CONNECTION WITH THOSE DEVICES, FOR EXAMPLE, WHETHER THEY WERE

01:53PM 11 GOING TO BE FUNCTIONAL OR NOT?

01:53PM 12 A. THE DIRECTION THAT I WAS GIVEN WAS TO MAKE SURE THAT THE

01:53PM 13 DEVICES WERE POWERED ON, THAT THEY HAD THE GRAPHIC USER

01:53PM 14 INTERFACE SHOWING ON THE SCREEN, AND THAT ONE OF THE DEVICES

01:54PM 15 SHOULD BE ABLE TO ACCEPT A CARTRIDGE.

01:54PM 16 Q. AND I'M SORRY IF YOU SAID ALREADY, BUT APPROXIMATELY HOW

01:54PM 17 MANY OF THESE MINILAB DEVICES ARE WE TALKING ABOUT BEING PUT IN

01:54PM 18 THAT ROOM?

01:54PM 19 A. I THINK IT WAS BETWEEN 10 TO 15.

01:54PM 20 Q. AND DID YOU, IN FACT, FOLLOW THOSE INSTRUCTIONS AND SET UP

01:54PM 21 THOSE DEVICES IN THAT ROOM IN ADVANCE OF THE TOUR?

01:54PM 22 A. I DON'T THINK I PERSONALLY SET THEM UP, BUT I WORKED WITH

01:54PM 23 ENGINEERS. I ASKED ENGINEERS TO SET THEM UP.

01:54PM 24 Q. YOUR JOB WAS TO MAKE SURE THAT IT WAS DONE?

01:54PM 25 A. RIGHT.

01:54PM 1 Q. AND WERE YOU A PART OF THAT TOUR WHEN THE WALGREENS VIP'S
01:54PM 2 CAME TO VISIT WHEN THAT ROOM WAS SET UP?

01:54PM 3 A. NO.

01:54PM 4 Q. SO DO YOU HAVE ANY KNOWLEDGE ABOUT WHAT MIGHT HAVE BEEN
01:54PM 5 SAID ABOUT THE DEVICES THAT WERE IN THAT ROOM?

01:55PM 6 A. NO.

01:55PM 7 Q. WAS MS. HOLMES INVOLVED IN THAT TOUR?

01:55PM 8 A. YES.

01:55PM 9 Q. WAS MR. BALWANI INVOLVED IN THAT TOUR?

01:55PM 10 A. YES.

01:55PM 11 Q. AFTER THE TOUR TOOK PLACE, DID THAT ROOM WITH ALL OF THOSE
01:55PM 12 DEVICES, THE NEXT GENERATION DEVICES, REMAIN SET UP THE WAY IT
01:55PM 13 WAS?

01:55PM 14 A. NO. THE DEVICES WERE REMOVED ABOUT A DAY OR TWO
01:55PM 15 AFTERWARD.

01:55PM 16 Q. AND HOW DID THAT COME TO TAKE PLACE?

01:55PM 17 A. ELIZABETH ASKED -- WELL, I ASKED ELIZABETH IF THOSE
01:55PM 18 DEVICES SHOULD REMAIN THERE, AND SHE SAID NO, PLEASE REMOVE
01:55PM 19 THEM.

01:55PM 20 AND SO I ASKED THE ENGINEERS TO DO THAT.

01:55PM 21 Q. SEPARATE FROM YOUR WORK ON THE TOURS, DID YOU HAVE ANY
01:55PM 22 INVOLVEMENT IN TECHNOLOGY DEMONSTRATIONS FOR VIP VISITORS?

01:55PM 23 A. YES, I HELPED TO COORDINATE THOSE TECHNOLOGY
01:55PM 24 DEMONSTRATIONS.

01:55PM 25 Q. CAN YOU SUMMARIZE WHAT YOUR ROLE WAS IN CONNECTION WITH

01:56PM 1 THOSE DEMOS?

01:56PM 2 A. MY ROLE WAS MAINLY TO COORDINATE WITH A NUMBER OF
01:56PM 3 DIFFERENT PERSONNEL WITHIN THE COMPANY FOR THE DEMOS.

01:56PM 4 SO THERE WERE SOME HARDWARE ENGINEERS WHO WERE RESPONSIBLE
01:56PM 5 FOR ACTUALLY SETTING UP A DEVICE;

01:56PM 6 THERE WERE SOFTWARE ENGINEERS WHO ARE RESPONSIBLE FOR
01:56PM 7 MAKING SURE THAT CERTAIN APPLICATIONS WERE ON THE DEVICE;

01:56PM 8 AND THEN THERE WERE ALSO LAB PERSONNEL WHO WERE NOTIFIED
01:56PM 9 IN ORDER TO PROCESS AND VALIDATE THE SAMPLES AND TESTS.

01:56PM 10 Q. CAN YOU WALK US THROUGH THE WORKFLOW FOR A TYPICAL
01:56PM 11 DEMONSTRATION STARTING WITH WHERE THE DEVICE WOULD BE FOR THE
01:56PM 12 DEMONSTRATION AND HOW IT WOULD GET THERE?

01:56PM 13 A. SO FIRST I WOULD GET A NOTIFICATION FROM EITHER ELIZABETH
01:57PM 14 OR SUNNY THAT A CERTAIN GUEST, ALSO KNOWN AS VIP AT TIMES,
01:57PM 15 WOULD BE COMING TO THE OFFICES AND THAT A DEMO WAS NEEDED.

01:57PM 16 SO THERE WERE INTERVIEW OR CONFERENCE ROOMS THAT WERE SET
01:57PM 17 UP FOR THIS PARTICULAR REASON, AND ONCE I RECEIVED THAT
01:57PM 18 INFORMATION, I WOULD THEN NOTIFY THE GROUP OF PEOPLE THAT I
01:57PM 19 JUST MENTIONED THAT A DEMO WAS HAPPENING AND THAT CERTAIN
01:57PM 20 DEVICES WOULD BE NEEDED TO BE SET UP.

01:57PM 21 AND I WOULD ALSO LET THE LAB KNOW SO THAT THEY WOULD BE
01:57PM 22 READY TO EITHER VALIDATE OR PROCESS A SAMPLE AT A MOMENT'S
01:57PM 23 NOTICE SO THAT RESULTS COULD GET SENT BACK TO THAT GUEST AS
01:57PM 24 SOON AS POSSIBLE.

01:57PM 25 Q. AND WHEN WE ARE TALKING ABOUT THE DEVICES THAT WERE IN THE

01:57PM 1 CONFERENCE ROOMS WHERE THE VIP'S WERE, WERE THEY ALWAYS THE
01:57PM 2 DEVICES THAT THE COMPANY WAS USING FOR CLINICAL PATIENT
01:58PM 3 TESTING, OR WERE THEY SOMETIMES THE NEXT GENERATION DEVICES
01:58PM 4 THAT WEREN'T BEING USED FOR PATIENT TESTING?

01:58PM 5 A. IN MY EXPERIENCE THEY WERE ONLY THE THERANOS DEVICES, THE
01:58PM 6 THERANOS MANUFACTURED DEVICES.

01:58PM 7 Q. AND BETWEEN THE DIFFERENT KINDS OF THERANOS MANUFACTURED
01:58PM 8 DEVICES, WERE THEY LIMITED TO, SAY, THE 3 SERIES THAT WAS
01:58PM 9 ACTUALLY BEING USED IN THE CLINICAL LAB, OR DID YOU SOMETIMES
01:58PM 10 PLACE IN THOSE CONFERENCE ROOMS THE NEXT GENERATION THERANOS
01:58PM 11 DEVICES THAT WEREN'T BEING USED FOR PATIENT TESTING?

01:58PM 12 A. IN MY COORDINATION, OFTENTIMES OTHER PEOPLE WOULD OFTEN
01:58PM 13 PLACE THOSE DEVICES, BUT WHEN I FIRST JOINED THE COMPANY, ONLY
01:58PM 14 THE EDISON 3.0 VERSION WAS PLACED IN THOSE ROOMS; AND THEN OVER
01:58PM 15 TIME THE NEXT GENERATION OF DEVICES WERE ALSO PLACED IN THOSE
01:58PM 16 ROOMS.

01:58PM 17 Q. WERE THERE INSTANCES WHERE A NEXT GENERATION DEVICE WAS
01:59PM 18 PLACED IN A ROOM, BUT OTHER DEVICES WERE NECESSARY TO RUN THE
01:59PM 19 SAMPLE, IF YOU RECALL?

01:59PM 20 A. I DON'T RECALL KNOWING AT THAT TIME WHICH DEVICES WERE
01:59PM 21 USED TO TEST THE SAMPLES.

01:59PM 22 Q. OKAY. AND WE'LL LOOK AT SOME EMAILS IN A FEW MINUTES THAT
01:59PM 23 MIGHT REFRESH YOUR RECOLLECTION.

01:59PM 24 FOR NOW LET ME ASK, WERE YOU EVER ASKED TO PLACE A
01:59PM 25 NON-THERANOS ANALYZER IN ONE OF THESE CONFERENCE ROOMS FOR A

01:59PM 1 VIP VISIT?

01:59PM 2 A. NO.

01:59PM 3 Q. DID YOU EVER, FOR EXAMPLE, PUT ONE OF THE BIG

01:59PM 4 SIEMENS ADVIA'S IN A CONFERENCE ROOM FOR A DEMO?

01:59PM 5 A. NO.

01:59PM 6 Q. HOW ABOUT AN IMMULITE DEVICE? DID YOU EVER PLACE AN

01:59PM 7 IMMULITE?

01:59PM 8 A. NO.

01:59PM 9 Q. HOW ABOUT A TECAN MACHINE? WERE YOU EVER ASKED TO PLACE A

01:59PM 10 TECAN MACHINE IN A CONFERENCE ROOM FOR ONE OF THESE DEMOS?

01:59PM 11 A. NO.

01:59PM 12 MR. BOSTIC: YOUR HONOR, THIS MIGHT BE A GOOD TIME

01:59PM 13 FOR A BREAK.

01:59PM 14 THE COURT: LET'S TAKE OUR BREAK, LADIES AND

01:59PM 15 GENTLEMEN. WE'LL TAKE 30 MINUTES, LADIES AND GENTLEMEN,

02:00PM 16 30 MINUTES.

02:00PM 17 (RECESS FROM 2:00 P.M. UNTIL 2:34 P.M.)

02:34PM 18 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

02:34PM 19 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

02:34PM 20 THE JURY AND ALTERNATES ARE PRESENT.

02:34PM 21 MR. BOSTIC, WOULD YOU LIKE TO CONTINUE?

02:34PM 22 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

02:34PM 23 Q. WELCOME BACK, MR. EDLIN.

02:34PM 24 A. THANK YOU.

02:34PM 25 Q. WE WERE TALKING ABOUT HOW TECHNOLOGY DEMONSTRATIONS WORKED

02:34PM 1 AT THERANOS.

02:34PM 2 DO YOU HAVE THAT SUBJECT IN MIND?

02:34PM 3 A. YES.

02:34PM 4 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

02:34PM 5 THE COURT: YES.

02:34PM 6 MR. BOSTIC: (HANDING.)

02:34PM 7 I'VE JUST HANDED THE WITNESS A BINDER. I BELIEVE THE
02:34PM 8 COURT ALREADY HAS A COPY AND SO DOES THE DEFENSE.

02:34PM 9 MS. WALSH: YES, YOUR HONOR.

02:34PM 10 BY MR. BOSTIC:

02:34PM 11 Q. MR. EDLIN, COULD I ASK YOU TO TURN TO TAB 959 IN THE
02:34PM 12 BINDER IN FRONT OF YOU.

02:35PM 13 A. OKAY.

02:35PM 14 Q. AND LET ME ASK, IN CONNECTION WITH THESE TECHNOLOGY
02:35PM 15 DEMONSTRATIONS AT THERANOS, YOU MENTIONED THAT YOU HAD A ROLE
02:35PM 16 IN COORDINATING THEM; IS THAT RIGHT?

02:35PM 17 A. CORRECT.

02:35PM 18 Q. DID YOU REGULARLY USE EMAIL IN ORDER TO COORDINATE WITH
02:35PM 19 THE VARIOUS PEOPLE WHO WERE INVOLVED IN THESE DEMONSTRATIONS?

02:35PM 20 A. YES, AND SOMETIMES THERE WAS VERBAL COMMUNICATION AS WELL.

02:35PM 21 Q. OKAY. AND WHEN IT CAME TO THE EMAILS, WERE THOSE EMAILS
02:35PM 22 IN THOSE CASES THE MECHANISM BY WHICH THE DETAILS AND LOGISTICS
02:35PM 23 AND THE RESULTS OF THOSE DEMONSTRATIONS WERE COORDINATED AND
02:35PM 24 EXCHANGED WITHIN THERANOS?

02:35PM 25 A. YES.

02:35PM 1 Q. AND IN ORDER FOR THAT PART OF THE COMPANY'S BUSINESS TO
02:35PM 2 OPERATE, WAS IT IMPORTANT THAT THOSE EMAILS BE ACCURATE?

02:35PM 3 A. YES.

02:35PM 4 Q. AND AT THERANOS, WERE EMAILS LIKE THOSE PRESERVED SO THAT
02:36PM 5 THEY COULD BE REFERRED BACK TO LATER, IF NECESSARY?

02:36PM 6 A. TO MY KNOWLEDGE, YES.

02:36PM 7 Q. LOOKING AT TAB 959, DO YOU SEE AN EMAIL CHAIN INCLUDING
02:36PM 8 YOU AND OTHERS AT THERANOS RELATING TO COORDINATING ONE OF
02:36PM 9 THESE DEMOS?

02:36PM 10 A. YES.

02:36PM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 959.

02:36PM 12 MS. WALSH: NO OBJECTION, YOUR HONOR.

02:36PM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:36PM 14 (GOVERNMENT'S EXHIBIT 959 WAS RECEIVED IN EVIDENCE.)

02:36PM 15 BY MR. BOSTIC:

02:36PM 16 Q. AND BEGINNING AT PAGE 2 OF THIS DOCUMENT, IF WE CAN ZOOM
02:36PM 17 IN ON THE TEXT OF YOUR EMAIL, MR. EDLIN, WE SEE AN EMAIL FROM
02:36PM 18 YOU DATED AUGUST 8TH, 2013; IS THAT CORRECT?

02:36PM 19 A. CORRECT.

02:36PM 20 Q. AND THE SUBJECT LINE IS DEMO ON AUGUST 13TH -- 4S AND
02:36PM 21 MINILAB.

02:36PM 22 DO YOU SEE THAT?

02:36PM 23 A. YES.

02:36PM 24 Q. TAKE A MOMENT TO REVIEW THIS IF YOU WOULD LIKE, BUT MY
02:36PM 25 QUESTION FOR YOU IS, WHAT WAS THE PURPOSE OF THIS EMAIL AND

02:36PM 1 WHAT WAS HAPPENING HERE?

02:37PM 2 A. THE PURPOSE OF THIS EMAIL WAS TO NOTIFY DIFFERENT
02:37PM 3 PERSONNEL WHO EACH HAD DIFFERENT SPECIALTIES ABOUT A DEMO THAT
02:37PM 4 WAS GOING TO HAPPEN.

02:37PM 5 IT WAS TYPICAL TO SEND -- IT WAS TYPICAL THAT I WOULD SEND
02:37PM 6 THESE TYPES OF EMAILS IF A DEMO WERE TO HAPPEN.

02:37PM 7 Q. AND ARE WE TALKING HERE ABOUT A DEMO THAT WAS GOING TO
02:37PM 8 TAKE PLACE AT THE THERANOS FACILITY?

02:37PM 9 A. YES, AT THE THERANOS OFFICE.

02:37PM 10 Q. IN THIS EMAIL YOU MENTION "WILL NEED TO HAVE A 4S AND
02:37PM 11 MINILAB SET UP IN INTERVIEW ROOM NUMBER 1."

02:37PM 12 DO YOU SEE THAT AT THE TOP OF THE MESSAGE?

02:37PM 13 A. YES.

02:37PM 14 Q. DOES THAT REFER TO THE ACTUAL DEVICES THAT WERE GOING TO
02:38PM 15 BE PRESENT DURING THE VIP MEETING?

02:38PM 16 A. YES.

02:38PM 17 Q. AND THE 4S AND MINILAB, CAN YOU REMIND US WHETHER THOSE
02:38PM 18 WERE CURRENT GEN THERANOS DEVICES USED FOR PATIENT TESTING, OR
02:38PM 19 WERE THEY NEXT GEN DEVICES THAT WERE NEVER USED FOR CLINICAL
02:38PM 20 TESTING?

02:38PM 21 A. THEY WERE NEXT GENERATION DEVICES.

02:38PM 22 Q. BELOW THAT IN THE EMAIL, THERE'S A PLAN A AND A PLAN B,
02:38PM 23 AND IT SAYS "PLAN A IS TO HAVE BOTH ABLE TO RUN NULL
02:38PM 24 PROTOCOLS."

02:38PM 25 DO YOU SEE THAT?

02:38PM 1 A. YES.

02:38PM 2 Q. AND THEN THERE'S A QUESTION. YOU ASK, "MICHAEL -- CAN YOU

02:38PM 3 PLEASE REFRESH MY MEMORY IF THE NORMANDY OR THE DEMO APP IS

02:38PM 4 MORE APPROPRIATE FOR THIS?"

02:38PM 5 DO YOU SEE THAT?

02:38PM 6 A. YES.

02:38PM 7 Q. AND YOU SAYS "PLAN B IS TO HAVE THE 4S ABLE TO RUN A CBC,

02:38PM 8 IF POSSIBLE."

02:38PM 9 DO YOU SEE THAT?

02:38PM 10 A. YES.

02:38PM 11 Q. AND WHY WAS IT NECESSARY TO HAVE A PLAN A AND A PLAN B IN

02:38PM 12 THIS CASE?

02:38PM 13 A. IT WAS NECESSARY BECAUSE AT THE TIME OF WRITING THIS

02:39PM 14 EMAIL, I WAS UNSURE OF WHAT WOULD BE AVAILABLE AND WHAT

02:39PM 15 WOULD -- WHAT THE DEVICES WOULD BE CAPABLE OF DOING FOR THIS

02:39PM 16 MEETING.

02:39PM 17 Q. THIS EMAIL IS SENT ON AUGUST 8TH, 2013?

02:39PM 18 A. RIGHT.

02:39PM 19 Q. AND IT'S IN ADVANCE OF A DEMONSTRATION THAT WAS GOING TO

02:39PM 20 HAPPEN ABOUT FIVE DAYS LATER?

02:39PM 21 A. CORRECT.

02:39PM 22 Q. AND WAS THERE STILL SOME UNCERTAINTY ABOUT WHETHER THERE

02:39PM 23 WAS GOING TO BE A 4S ABLE TO RUN A BLOOD COUNT FIVE DAYS AFTER

02:39PM 24 THIS?

02:39PM 25 A. AT THE TIME OF WRITING, YES, THERE WAS UNCERTAINTY.

02:39PM 1 Q. WAS THAT A COMMON THING IN YOUR EXPERIENCE AT THERANOS FOR
02:39PM 2 THERE TO BE UNCERTAINTY ABOUT WHAT EQUIPMENT WOULD BE AVAILABLE
02:39PM 3 ON A CERTAIN DAY OR WHAT IT WOULD BE CAPABLE OF DOING?

02:39PM 4 A. ONLY FOR A PERIOD OF TIME.

02:39PM 5 LATER ON THERE WAS MORE CERTAINTY AND A MORE RELIABLE
02:39PM 6 PROCESS FOR DEMOS.

02:40PM 7 Q. THE PLAN A SECTION DISCUSSES THE POSSIBILITY OF HAVING
02:40PM 8 THESE TWO DEVICES, THE 4S AND THE MINILAB, BEING ABLE TO RUN
02:40PM 9 NULL PROTOCOLS.

02:40PM 10 DO YOU SEE THAT?

02:40PM 11 A. YES.

02:40PM 12 Q. AND CAN YOU EXPLAIN WHAT THE NULL PROTOCOL WAS IN THIS
02:40PM 13 CONTEXT?

02:40PM 14 A. SO A PROTOCOL WAS ESSENTIALLY LOADED ONTO A DEVICE AND
02:40PM 15 ACCORDING TO A DIFFERENT PROTOCOL, IT PROGRAMMED WHAT THE
02:40PM 16 DEVICE WOULD ACTUALLY DO IF A CARTRIDGE WAS INSERTED INTO A
02:40PM 17 DEVICE OR IF OTHER FUNCTIONS WERE REQUESTED OR IF A USER
02:40PM 18 PRESSED A CERTAIN BUTTON ON THE DEVICE, FOR EXAMPLE.

02:40PM 19 A NULL PROTOCOL WAS ONE OF SEVERAL PROTOCOLS THAT WAS
02:40PM 20 AVAILABLE THROUGH THE DEMO APP, WHICH IS REFERRED TO HERE.

02:41PM 21 THE NULL PROTOCOL BASICALLY MEANS JUST AN EMPTY PROTOCOL.
02:41PM 22 SO THE NULL PROTOCOL WOULD NOT ATTEMPT TO RUN A BLOOD SAMPLE OR
02:41PM 23 RUN A SAMPLE.

02:41PM 24 Q. SO LET'S IMAGINE THAT WE'RE IN THAT CONFERENCE ROOM, THE
02:41PM 25 DEVICE IS THERE, IT'S SET UP TO RUN THIS NULL PROTOCOL.

02:41PM 1 IF A SAMPLE IS PUT INTO THE MACHINE THEN, CAN YOU DESCRIBE
02:41PM 2 WHAT THE VISITOR WOULD SEE OR WHAT WOULD WE SEE IN THAT CASE?
02:41PM 3 A. THE VISITOR WOULD SEE A GRAPHIC USER INTERFACE ON THE
02:41PM 4 DEVICE, AND THEN DEPENDING ON WHAT WAS DONE, THEY MIGHT SEE
02:41PM 5 DIFFERENT THINGS, BUT THERE COULD BE -- I THINK AT ONE POINT
02:41PM 6 THE DEVICE HAD LOADING OR INITIALIZING, SOMETHING LIKE THAT.
02:41PM 7 Q. SO THE DEVICE RUNNING THE NULL PROTOCOL WOULD BE POWERED
02:41PM 8 ON AND THE SCREEN WOULD BE ON?
02:41PM 9 A. CORRECT.
02:42PM 10 Q. AND WHEN THE SAMPLE WAS LOADED, YOU SAID THE SCREEN MIGHT
02:42PM 11 SAY LOADING OR INITIALIZING?
02:42PM 12 A. IF SOMETHING WAS LOADED.
02:42PM 13 BUT WHEN A USER FIRST SAW IT, THEY WOULD BASICALLY -- I
02:42PM 14 THINK THEY WOULD SEE A THERANOS LOGO, AND THEN A BUTTON THAT
02:42PM 15 WOULD INITIALIZE THE STEPS TO POTENTIALLY PROCESS A SAMPLE.
02:42PM 16 Q. OKAY. AND WHEN THE NULL PROTOCOL WAS RUNNING, WAS THE
02:42PM 17 DEVICE CAPABLE OF ACCEPTING A SAMPLE? WOULD THE MACHINE OPEN
02:42PM 18 AND THEN TAKE IN THE SAMPLE?
02:42PM 19 A. I THINK IT COULD BE CAPABLE. BUT THE NULL PROTOCOL
02:42PM 20 ITSELF, YES, WOULD ACCEPT A CARTRIDGE AND THERE COULD BE A
02:42PM 21 NANOTAINER, OR NOT, ON THE CARTRIDGE, BUT THEN AFTERWARD
02:43PM 22 NOTHING WOULD HAPPEN.
02:43PM 23 Q. SO THE SAMPLE WOULD GO INTO THE DEVICE, BUT THE DEVICE IS
02:43PM 24 NOT EVEN TRYING TO ACTUALLY RUN A TEST OR RETURN A RESULT; IS
02:43PM 25 THAT RIGHT?

02:43PM 1 A. THAT IS MY UNDERSTANDING.

02:43PM 2 Q. OKAY. AND WAS THE NULL PROTOCOL AN ITEM OF SOFTWARE THAT

02:43PM 3 WAS SPECIFIC TO THE THERANOS EDISON?

02:43PM 4 A. IN MY EXPERIENCE THE NULL PROTOCOL ONLY APPLIED TO THE

02:43PM 5 NEXT GENERATION VERSION OF THE DEVICES, SO THE 4S OR THE

02:43PM 6 MINILAB AS IS IN THIS EMAIL.

02:43PM 7 Q. I SEE.

02:43PM 8 AND TO YOUR KNOWLEDGE, WAS THE NULL PROTOCOL SOMETHING

02:43PM 9 THAT WAS DEVELOPED IN HOUSE AT THERANOS?

02:43PM 10 A. I BELIEVE SO.

02:43PM 11 Q. WHO WOULD HAVE BEEN INVOLVED IN CREATING THE NULL

02:43PM 12 PROTOCOL?

02:43PM 13 A. THE SOFTWARE DEVELOPERS.

02:43PM 14 Q. AND THERE WAS A GROUP OF SOFTWARE DEVELOPERS AT THERANOS?

02:44PM 15 A. YES.

02:44PM 16 Q. AND TO WHOM DID THEY REPORT?

02:44PM 17 A. TO SUNNY.

02:44PM 18 Q. OKAY. AND ARE YOU AWARE OF MR. BALWANI'S BACKGROUND?

02:44PM 19 A. YES.

02:44PM 20 Q. WHAT WAS HIS BACKGROUND OR SPECIALTY IN BEFORE HE CAME TO

02:44PM 21 THERANOS?

02:44PM 22 A. I WOULD SAY BROADLY IN SOFTWARE.

02:44PM 23 Q. YOU ASKED MICHAEL CRAIG WHETHER THE NORMANDY OR DEMO APP

02:44PM 24 IS MORE APPROPRIATE FOR THIS.

02:44PM 25 CAN YOU EXPLAIN FOR US WHAT THAT MEANS? WHAT ARE THE APPS

02:44PM 1 AND WHAT IS THE DIFFERENCE BETWEEN THE NORMANDY AND THE DEMO
02:44PM 2 APP?

02:44PM 3 A. A DEMO APP WAS USED FOR DEMOS. THIS APP RESEMBLED WHAT I
02:44PM 4 THINK IS GENERALLY COMMON ON PHONE APPS IN TERMS OF A SIMPLE
02:44PM 5 DESIGN AND AN EASY USER EXPERIENCE.

02:44PM 6 I BELIEVE THAT THE NORMANDY APP WAS USED IN THE LAB AND
02:45PM 7 WAS NOT AS USER FRIENDLY TO, LET'S SAY, SOMEONE WHO WASN'T
02:45PM 8 FAMILIAR WITH THE DEVICE.

02:45PM 9 Q. SO WHEN YOU'RE TALKING ABOUT USER FRIENDLINESS, ARE WE
02:45PM 10 TALKING ABOUT THINGS LIKE APPEARANCE AND HOW INTUITIVE IT IS?

02:45PM 11 A. YES.

02:45PM 12 Q. AND YOU'RE SAYING THAT THE VERSION OF THE INTERFACE THAT
02:45PM 13 WOULD SHOW UP DURING A DEMONSTRATION FOR A VIP WOULD BE
02:45PM 14 DIFFERENT FROM THE INTERFACE THAT WOULD ACTUALLY BE USED IN THE
02:45PM 15 LAB?

02:45PM 16 MS. WALSH: OBJECTION. LEADING.

02:45PM 17 THE COURT: SUSTAINED.

02:45PM 18 MR. BOSTIC: I CAN MOVE ON.

02:45PM 19 Q. LET'S TURN TO THE FIRST PAGE OF THIS EXHIBIT AND LOOK AT
02:45PM 20 THE BOTTOM, AND I WANT TO ASK YOU ABOUT ANOTHER FEATURE OF THE
02:45PM 21 DEMO APP.

02:45PM 22 LET'S ZOOM IN ON THE BOTTOM COUPLE OF MESSAGES. THERE.
02:45PM 23 THANKS.

02:45PM 24 DO YOU SEE ON THE BOTTOM THERE'S A RESPONSE TO YOUR
02:45PM 25 QUESTION TO MICHAEL CRAIG ON THE BOTTOM RELATING TO THE DEMO

02:46PM 1 APP?

02:46PM 2 A. YES.

02:46PM 3 Q. AND MR. CRAIG SAYS, "I WOULD RECOMMEND THE DEMO APP,

02:46PM 4 ALTHOUGH EITHER WOULD WORK. THE DEMO APP MERELY SHIELDS

02:46PM 5 PROTOCOL FAILURES FROM THE CLIENT."

02:46PM 6 DO YOU SEE THAT?

02:46PM 7 A. YES.

02:46PM 8 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT THAT MEANS?

02:46PM 9 A. YES.

02:46PM 10 Q. AND WHAT DOES THAT MEAN?

02:46PM 11 A. THIS MEANS THAT IF THE DEMO APP WAS ON THE DEVICE, AND IF

02:46PM 12 A TEST WAS BEING RUN AND THERE WAS AN ERROR, THAT ERROR WOULD

02:46PM 13 NOT APPEAR ON THE SCREEN.

02:46PM 14 Q. AND ARE WE TALKING ABOUT THE KIND OF ERROR THAT MIGHT

02:46PM 15 PREVENT A RESULT FROM BEING RETURNED ON A SAMPLE?

02:46PM 16 A. YES, ALONG WITH, I THINK THERE WERE A NUMBER OF DIFFERENT

02:46PM 17 KINDS OF ERRORS.

02:46PM 18 Q. WHAT WOULD HAPPEN INSTEAD IF A DEVICE DURING DEMONSTRATION

02:46PM 19 WAS RUNNING THE DEMO APP AND IT ENCOUNTERED THAT KIND OF ERROR

02:46PM 20 THAT WOULD PREVENT IT FROM RETURNING A RESULT? AGAIN, PUTTING

02:46PM 21 US BACK IN THE ROOM, WHAT WOULD WE SEE ON THE SCREEN, IF

02:46PM 22 ANYTHING?

02:46PM 23 A. I THINK THAT THE SCREEN WOULD STILL SAY PROCESSING.

02:47PM 24 Q. AND IT WOULD JUST SAY THAT INDEFINITELY?

02:47PM 25 A. I'M NOT SURE WHEN IT STOPPED IF IT DID.

02:47PM 1 Q. HOW WOULD THAT COMPARE TO THE VERSION OF THE SOFTWARE THAT
02:47PM 2 WOULD ACTUALLY RUN IN THE LAB, IF YOU KNOW?

02:47PM 3 A. I'M NOT AN EXPERT ON THE NORMANDY APP OR WHAT WAS RUN IN
02:47PM 4 THE LAB, BUT IT'S MY UNDERSTANDING THAT AS SOON AS AN ERROR
02:47PM 5 OCCURRED, IT WOULD SHOW AND NOTIFY THE USER.

02:47PM 6 Q. OKAY. YOU RESPOND TO MR. CRAIG AND HIS DESCRIPTION ABOUT
02:47PM 7 THE DEMO APP SHIELDING PROTOCOL FAILURES, YOU WRITE "NEVER A
02:47PM 8 BAD THING."

02:47PM 9 DO YOU SEE THAT?

02:47PM 10 A. YES.

02:47PM 11 Q. AT THIS TIME DID YOU BELIEVE THAT IT WAS A GOOD IDEA TO
02:47PM 12 HAVE THIS DEMO APP IN PLACE DURING VIP DEMOS LIKE THIS?

02:47PM 13 MS. WALSH: OBJECTION.

02:48PM 14 THE COURT: OVERRULED.

02:48PM 15 YOU CAN ANSWER THE QUESTION.

02:48PM 16 THE WITNESS: I BASED MY RECOMMENDATION ON THE
02:48PM 17 INFORMATION THAT I WAS GIVEN, AND THE RECOMMENDATION FROM
02:48PM 18 PEOPLE THAT I CONSIDERED EXPERTS AT THE COMPANY.

02:48PM 19 BY MR. BOSTIC:

02:48PM 20 Q. AND WHEN WE'RE TALKING ABOUT THESE MEETINGS WITH VIP'S,
02:48PM 21 WHO WAS TYPICALLY RUNNING THESE MEETINGS? WAS IT YOU ACTUALLY
02:48PM 22 RUNNING THE MEETINGS IN THE CONFERENCE ROOMS?

02:48PM 23 A. NO.

02:48PM 24 Q. WHO WAS -- WHO WOULD RUN THOSE MEETINGS?

02:48PM 25 A. IN MY EXPERIENCE MOST OF THE MEETINGS WERE RUN BY

02:48PM 1 ELIZABETH, AND THERE WERE OTHER MEETINGS THAT WERE ALSO RUN
02:48PM 2 WITH SUNNY.

02:48PM 3 Q. LOOKING AT THE TOP OF THE SELECTION THAT IS ON THE SCREEN
02:48PM 4 IN FRONT OF YOU, THERE'S A MESSAGE ON AUGUST 10TH, TWO DAYS
02:48PM 5 LATER, FROM DANIEL YOUNG.

02:48PM 6 DO YOU SEE THAT?

02:48PM 7 A. YES.

02:48PM 8 Q. HE SAYS, "WE HAVE RE-ALLOCATED THE 4S DEVICES, SO THEY ARE
02:49PM 9 NOT AVAILABLE FOR PREPARING TO RUN CBC FOR THIS DEMO,
02:49PM 10 UNFORTUNATELY."

02:49PM 11 DO YOU SEE THAT?

02:49PM 12 A. YES.

02:49PM 13 Q. DOES THIS MEAN THAT PLAN B IN YOUR EMAIL, BEING ABLE TO
02:49PM 14 HAVE THE 4S RUN A CBC, WAS NOT GOING TO BE POSSIBLE?

02:49PM 15 A. THAT'S CORRECT.

02:49PM 16 Q. LET'S LOOK AT THE TOP HALF OF PAGE 1, PLEASE.

02:49PM 17 IN YOUR EMAIL IN RESPONSE YOU SAY, "OK, THAT'S FINE."

02:49PM 18 DO YOU SEE THAT?

02:49PM 19 A. YES.

02:49PM 20 Q. AND YOU ASK, "WHEN ARE THE 4S AND THE MINILAB SCHEDULED TO
02:49PM 21 BE MOVED TO INTERVIEW ROOM NUMBER 1?"

02:49PM 22 DO YOU SEE THAT?

02:49PM 23 A. YES.

02:49PM 24 Q. AND THEN YOU ALSO ASK ABOUT PUTTING ONE OF THE 3.5'S IN
02:50PM 25 THE DEMO ROOM.

02:50PM 1 DO YOU SEE THAT?

02:50PM 2 A. YES.

02:50PM 3 Q. AND YOU ASK ABOUT THE COMFORT LEVEL WITH RUNNING A MALE
02:50PM 4 HEALTH/THYROID PANEL ON THE 3.5.

02:50PM 5 DO YOU SEE THAT?

02:50PM 6 A. YES.

02:50PM 7 Q. AND WHY WERE YOU ASKING ABOUT THE COMFORT LEVEL OF RUNNING
02:50PM 8 THAT ASSAY?

02:50PM 9 A. I WAS INTERESTED IN UNDERSTANDING WHETHER THAT WOULD BE A
02:50PM 10 POTENTIAL OPTION FOR A DEMO MEETING, AND IF THAT TYPE OF TEST
02:50PM 11 COULD BE OFFERED TO THE GUESS.

02:50PM 12 Q. IN OTHER WORDS, WHETHER THAT TEST WAS READY FOR USE IN
02:50PM 13 THIS KIND OF TEST?

02:50PM 14 A. YES.

02:50PM 15 Q. IN THE TOP EMAIL IN THIS CHAIN, SAMARTHA ANEKAL WRITES,
02:50PM 16 "DAN, THE ASSAY TEAMS ARE PLANNING ON USING THE 3.5 DEVICES
02:50PM 17 TOMORROW, BUT WE CAN MOVE ONE OF THE R&D UNITS IF IT'S JUST FOR
02:50PM 18 SHOW-AND-TELL?"

02:51PM 19 DO YOU SEE THAT?

02:51PM 20 A. YES.

02:51PM 21 Q. AND DO YOU RECALL WHEN THERANOS FIRST BEGAN OFFERING
02:51PM 22 CLINICAL BLOOD TESTS TO PATIENTS?

02:51PM 23 A. YES. IN SEPTEMBER OF 2013.

02:51PM 24 Q. THE MONTH AFTER THIS TOOK PLACE?

02:51PM 25 A. YES.

02:51PM 1 Q. OKAY. YOU CAN PUT THAT ASIDE.

02:51PM 2 I'LL ASK YOU TO TURN NEXT TO TAB 961 IN YOUR BINDER.

02:51PM 3 A. OKAY.

02:51PM 4 Q. AND AT 961, DO YOU SEE ANOTHER EMAIL CHAIN INCLUDING YOU,

02:51PM 5 MR. BALWANI, AND MS. HOLMES RELATING TO COORDINATION FOR A DEMO

02:51PM 6 THE FOLLOWING DAY?

02:51PM 7 A. YES.

02:51PM 8 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 961.

02:51PM 9 MS. WALSH: NO OBJECTION.

02:51PM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:51PM 11 (GOVERNMENT'S EXHIBIT 961 WAS RECEIVED IN EVIDENCE.)

02:51PM 12 BY MR. BOSTIC:

02:51PM 13 Q. SO, MR. EDLIN, STARTING WITH YOUR EMAIL, YOU WRITE TO

02:52PM 14 MS. HOLMES AND MR. BALWANI, "THE FOLLOWING DEVICES ARE PLANNED

02:52PM 15 TO BE IN THE DEMO/INTERVIEW ROOM."

02:52PM 16 DO YOU SEE THAT?

02:52PM 17 A. YES.

02:52PM 18 Q. AND WHY WERE YOU COORDINATING WITH MS. HOLMES AND

02:52PM 19 MR. BALWANI ON THE DETAILS FOR THIS DEMO FOR TOMORROW'S

02:52PM 20 MEETING?

02:52PM 21 A. I WANTED TO MAKE SURE THAT THEY WERE AWARE OF WHICH

02:52PM 22 DEVICES WOULD BE IN THE ROOM AND WHAT THE CAPABILITIES WERE.

02:52PM 23 I BELIEVE IN THIS CASE THEY WERE BRINGING THE GUESTS TO

02:52PM 24 THE ROOM.

02:52PM 25 Q. AND YOU MENTION AN ASSORTMENT OF DEVICES THAT WERE GOING

02:52PM 1 TO BE IN THE DEMO/INTERVIEW ROOM. NUMBER ONE ON THAT LIST WAS

02:52PM 2 A 3.5 EDISON WITH A DEMO APP SET TO RUN THE NULL PROTOCOL.

02:52PM 3 DO YOU SEE THAT?

02:52PM 4 A. YES.

02:52PM 5 Q. AND THEN THERE'S A 4S WITH THE DEMO APP ALSO SET TO RUN

02:53PM 6 THE NULL PROTOCOL?

02:53PM 7 A. YES.

02:53PM 8 Q. AND THEN WE SEE TWO MINILABS, ONE THAT COULD RUN THE NULL

02:53PM 9 PROTOCOL AND ONE THAT COULD NOT; IS THAT RIGHT?

02:53PM 10 A. YES.

02:53PM 11 Q. AND THEN YOU ASK ABOUT WHETHER THEY WOULD ALSO LIKE TO

02:53PM 12 HAVE A 3.0 EDISON THAT COULD RUN THE H1N1 MILITARY DEMO; IS

02:53PM 13 THAT RIGHT?

02:53PM 14 A. YES.

02:53PM 15 Q. AND IF THAT 3.0 EDISON WAS NOT INCLUDED, WOULD ANY OF

02:53PM 16 THESE FOUR DEVICES THAT YOU LIST BE CAPABLE OF ACTUALLY RUNNING

02:53PM 17 A PATIENT SAMPLE IN THE ROOM?

02:53PM 18 A. I'M NOT SURE.

02:53PM 19 Q. THE FIRST THREE, IT MENTIONS THEY'RE SET TO RUN THE NULL

02:53PM 20 PROTOCOL; IS THAT CORRECT?

02:53PM 21 A. YES.

02:53PM 22 Q. DID THE NULL PROTOCOL INVOLVE ACTUALLY PROCESSING A

02:53PM 23 PATIENT SAMPLE AND RETURNING A RESULT?

02:54PM 24 A. NO.

02:54PM 25 Q. AND DEVICE NUMBER 4, YOU NOTE THAT IT WOULD NOT BE ABLE TO

02:54PM 1 RUN THE NULL PROTOCOL, DUE TO OLD PIPETTE NOZZLES THAT FAIL
02:54PM 2 ONCE THEY INITIALIZE IN THE PROTOCOL?
02:54PM 3 A. RIGHT.
02:54PM 4 Q. WOULD THAT DEVICE BE CAPABLE OF RUNNING A PATIENT SAMPLE
02:54PM 5 BASED ON THAT PROBLEM?
02:54PM 6 A. I DON'T BELIEVE SO.
02:54PM 7 Q. OKAY. WE CAN PUT THAT ASIDE. THANK YOU.
02:54PM 8 AND LET ME ASK YOU TO LOOK NEXT AT TAB 860, PLEASE.
02:55PM 9 A. OKAY.
02:55PM 10 Q. DO YOU SEE AT TAB 860 ANOTHER EMAIL CHAIN INCLUDING YOU
02:55PM 11 AND MS. HOLMES AND MR. BALWANI RELATING TO COORDINATION AND
02:55PM 12 RESULTS FROM ONE OF THESE DEMOS?
02:55PM 13 A. YES.
02:55PM 14 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 860.
02:55PM 15 MS. WALSH: NO OBJECTION.
02:55PM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
02:55PM 17 (GOVERNMENT'S EXHIBIT 860 WAS RECEIVED IN EVIDENCE.)
02:55PM 18 MR. BOSTIC: LET'S START ON PAGE 12. THANK YOU,
02:55PM 19 MS. WACHS. AND IF WE CAN ZOOM IN ON THE BOTTOM JUST TO HAVE
02:55PM 20 THAT HEADER INFORMATION FOR THAT EMAIL.
02:55PM 21 Q. DO YOU SEE, MR. EDLIN, WE'RE ABOUT TO LOOK AT AN EMAIL
02:55PM 22 FROM YOU ON MAY 31ST, 2013?
02:55PM 23 A. YES.
02:55PM 24 Q. AND THE SUBJECT LINE IS SAMPLE RUNNING RIGHT NOW.
02:55PM 25 DO YOU SEE THAT?

02:55PM 1

A. YES.

02:55PM 2

Q. LET'S LOOK AT PAGE 13.

02:55PM 3

AT THE TOP OF PAGE 13 YOU ASK, "WHAT IS THE STATUS? IT'S

02:56PM 4

ALREADY BEEN RUNNING FOR 1 HOUR 15 MINUTES AND HAS BEEN STUCK

02:56PM 5

ON 99 PERCENT FOR ABOUT 8 MINUTES."

02:56PM 6

DO YOU RECALL WHAT YOU WERE REFERRING TO IN THIS EMAIL?

02:56PM 7

A. YES.

02:56PM 8

Q. AND CAN YOU EXPLAIN IT FOR US?

02:56PM 9

A. THIS REFERS TO A DEMO THAT WAS BEING RUN AT A HOSPITAL IN

02:56PM 10

NEW YORK, AND A SAMPLE WAS RUNNING ON ONE OF THE DEVICES IN THE

02:56PM 11

ROOM, AND I WAS KEEPING TABS ON THE DEVICE TO MAKE SURE THAT IT

02:56PM 12

WAS RUNNING AND THAT IT WOULD BE COMPLETED IN TIME FOR THE END

02:56PM 13

OF THE MEETING, AND I NOTICED THAT THE PROCESS, HAVING

02:56PM 14

COMPLETED IT, WAS STUCK ON 99 PERCENT.

02:56PM 15

SO I SENT AN EMAIL TO ONE OF THE -- TO SANDHYA, WHO WAS A

02:56PM 16

SOFTWARE ENGINEER OR A DEVELOPER, TO ASK ABOUT WHY THAT WAS.

02:56PM 17

Q. AND WHEN THIS DEMO WAS HAPPENING, WERE YOU PRESENT IN

02:57PM 18

NEW YORK WITH THE DEVICE?

02:57PM 19

A. YES.

02:57PM 20

Q. AND YOU WERE COORDINATING WITH THERANOS PERSONNEL BACK IN

02:57PM 21

CALIFORNIA?

02:57PM 22

A. CORRECT.

02:57PM 23

Q. AND WHY WAS THE DEVICE IN THAT HOSPITAL IN NEW YORK? WAS

02:57PM 24

IT THERE BECAUSE THAT HOSPITAL WAS USING THE DEVICE FOR PATIENT

02:57PM 25

TESTING?

02:57PM 1 A. NO. THAT MEETING WAS CENTERED ON SHARING WHAT THERANOS AS
02:57PM 2 A COMPANY WAS DOING AND EXPLORING POTENTIAL OPPORTUNITIES TO
02:57PM 3 PARTNER WITH THE HOSPITAL.

02:57PM 4 Q. SO YOU WERE THERE WITH THE DEVICE FOR PURPOSES OF THAT
02:57PM 5 DEMONSTRATION?

02:57PM 6 A. CORRECT. I WAS WITH A GROUP OF THERANOS EMPLOYEES.

02:57PM 7 Q. AND LET'S LOOK AT PAGE 11 OF THE EMAIL.

02:57PM 8 IF WE ZOOM IN ON THE MIDDLE OF THE PAGE, WE SEE THERE'S
02:57PM 9 SOME DISCUSSION ABOUT WHAT THE RUN TIME OF THAT SHOULD HAVE
02:57PM 10 BEEN; CORRECT?

02:57PM 11 A. CORRECT.

02:58PM 12 Q. AND THEN LET'S LOOK AT THE TOP OF THIS PAGE.

02:58PM 13 OKAY. AND DO YOU SEE IN THE BOTTOM OF YOUR EMAIL HERE, IT
02:58PM 14 SAYS, "NOTE THAT THE SAME DONOR GAVE BLOOD FOR THE 3.0 RUN AS
02:58PM 15 WELL AS THE RUN SCHEDULED FOR TONIGHT, AND WE WILL BE COMPARING
02:58PM 16 RESULTS."

02:58PM 17 DO YOU SEE THAT?

02:58PM 18 A. YES.

02:58PM 19 Q. OKAY. LET'S GO TO PAGE 10. WE'RE MOVING FORWARD IN TIME
02:58PM 20 NOW. LET'S ZOOM IN ON THE TEXT OF THIS MIDDLE EMAIL.

02:58PM 21 IS THIS AN EMAIL FROM YOU TO DANIEL YOUNG?

02:58PM 22 A. YES.

02:58PM 23 Q. IT SAYS AT THE TOP, "GIVEN THAT THE SAMPLES ARE BEING RUN
02:58PM 24 AT THIS LATE HOUR, I JUST WANT TO TOUCH BASE WITH YOU TO ENSURE
02:58PM 25 THAT WE'RE COORDINATED FOR THESE REPORTS."

02:58PM 1 DO YOU SEE THAT?

02:58PM 2 A. YES.

02:58PM 3 Q. WHAT ROLE DID DANIEL YOUNG HAVE IN CONNECTION WITH THE
02:58PM 4 RESULTS FROM THESE REPORTS, OR THESE DEMOS?

02:59PM 5 A. DANIEL REVIEWED THE RESULTS AND THE TEST LOGS TO ENSURE
02:59PM 6 THAT THE TEST WAS VALID, AND HE INTERPRETED THE RESULTS, AND
02:59PM 7 THEN APPROVED THEM FOR DISTRIBUTION BACK TO THE GUEST.

02:59PM 8 Q. AND WAS THAT HIS REGULAR ROLE IN CONNECTION WITH
02:59PM 9 DEMONSTRATIONS LIKE THIS?

02:59PM 10 A. YES.

02:59PM 11 Q. DID HE HAVE THAT SAME ROLE IN CONNECTION WITH CLINICAL
02:59PM 12 PATIENT TESTING AT THERANOS?

02:59PM 13 A. I'M NOT EXACTLY SURE, BUT I KNOW THAT HE WAS A LAB
02:59PM 14 DIRECTOR.

02:59PM 15 Q. YOU BELIEVE THAT DANIEL YOUNG WAS A LAB DIRECTOR OF THE
02:59PM 16 CLINICAL LAB AT THERANOS?

02:59PM 17 A. I BELIEVE IT WAS IN THE ARIZONA LAB.

02:59PM 18 Q. AT THE BOTTOM OF YOUR EMAIL, THE LAST SENTENCE SAYS, "I'LL
02:59PM 19 BASE MY SCHEDULE ON YOUR AVAILABILITY SO THAT WE CAN FINALIZE
03:00PM 20 THE REPORTS AND GET THEM TO EAH FOR APPROVAL AS SOON AS
03:00PM 21 POSSIBLE."

03:00PM 22 DO YOU SEE THAT?

03:00PM 23 A. YES.

03:00PM 24 Q. WAS EAH ELIZABETH HOLMES?

03:00PM 25 A. YES.

03:00PM 1 Q. AND WHAT WAS HER ROLE IN CONNECTION WITH THE RESULTS FROM
03:00PM 2 THESE DEMO TESTS?

03:00PM 3 A. IN CONNECTION TO THIS PARTICULAR DEMO, I REMEMBER THAT
03:00PM 4 ELIZABETH WAS INTERESTED IN SEEING WHAT THE END RESULTS WOULD
03:00PM 5 BE. BUT USUALLY SHE WAS NOT INVOLVED IN REVIEWING RESULTS FOR
03:00PM 6 DEMOS.

03:00PM 7 Q. ALL RIGHT. LET'S LOOK AT PAGE 8, AND THE BOTTOM OF THE
03:00PM 8 PAGE, AND JUST TO CAPTURE THAT HEADER INFORMATION FOR THAT
03:00PM 9 BOTTOM EMAIL.

03:00PM 10 WE'RE LOOKING AT AN EMAIL FROM YOU ON THAT SATURDAY,
03:00PM 11 JUNE 1ST, TO MS. HOLMES, MR. BALWANI, AND DANIEL YOUNG.

03:00PM 12 DO YOU SEE THAT?

03:00PM 13 A. YES.

03:00PM 14 Q. AND YOU'RE PROVIDING SOME INFORMATION ABOUT THE TEST.
03:01PM 15 LET'S LOOK, IN PARTICULAR, AT THE FOLLOWING PAGE, PAGE 9.

03:01PM 16 AND AT THE TOP OF THAT PAGE YOU SAY IN YOUR EMAIL, "IT
03:01PM 17 LOOKS LIKE THERE IS SOME DISCREPANCY BETWEEN THE TWO INFECTIOUS
03:01PM 18 PANEL RUNS -- ANY THOUGHTS ON WHY THIS IS THE CASE?"

03:01PM 19 DO YOU SEE THAT?

03:01PM 20 A. YES.

03:01PM 21 Q. AND DO YOU RECALL THAT EARLIER IN THE CHAIN WE SAW THAT
03:01PM 22 THIS SAME DONOR HAD DONATED FOR TWO DIFFERENT KINDS OF ANALYSIS
03:01PM 23 AND THE RESULTS WERE GOING TO BE COMPARED?

03:01PM 24 A. YES.

03:01PM 25 Q. AND YOU'RE HIGHLIGHTING A DISCREPANCY BETWEEN TWO RUNS OF

03:01PM 1 THE SAME PANEL; CORRECT?

03:01PM 2 A. CORRECT.

03:01PM 3 Q. BUT THESE SAMPLES WERE FROM THE SAME DONOR?

03:01PM 4 A. CORRECT.

03:01PM 5 Q. AND WHY DID YOU WANT TO ASK MS. HOLMES, MR. BALWANI, AND

03:02PM 6 DR. YOUNG ABOUT THIS?

03:02PM 7 A. AS PART OF MY ROLE IN THIS DEMONSTRATION, MY ROLE WAS TO

03:02PM 8 SEND THE RESULTS BACK TO THE PATIENT, EMAIL THEM BACK AFTER

03:02PM 9 RECEIVING THEM FROM THE LAB, AND I NOTICED THAT THERE WAS A

03:02PM 10 DISCREPANCY, AND I WAS CURIOUS AS TO WHY THAT WAS, AND I WANTED

03:02PM 11 TO MAKE SURE THAT THE GROUP ON THIS EMAIL WAS AWARE OF IT.

03:02PM 12 Q. LET'S LOOK AT PAGE 7 AND GET SOME MORE DETAILS ABOUT WHAT

03:02PM 13 WAS HAPPENING HERE.

03:02PM 14 I'M SORRY THAT THESE EMAILS ARE SO NARROW HERE.

03:02PM 15 LET'S LOOK AT YOUR MESSAGE, SO THE BOTTOM TWO-THIRDS.

03:02PM 16 DO YOU SEE YOU PROVIDE SOME ADDITIONAL CONTEXT ABOUT THIS

03:02PM 17 DISCREPANCY? AND YOU SAY FOR TEST NUMBER 1 THE SAMPLE WAS

03:03PM 18 COLLECTED, DEPOSITED DIRECTLY INTO A CARTRIDGE, AND RUN ON

03:03PM 19 SITE.

03:03PM 20 THE CARTRIDGE HAD BEEN SHIPPED TO NYC IN STANDARD

03:03PM 21 PACKAGING.

03:03PM 22 DO YOU SEE THAT?

03:03PM 23 A. YES.

03:03PM 24 Q. AND LET'S TURN THE PAGE AND LOOK AT PAGE 8 WHERE AT THE

03:03PM 25 TOP YOU ADDRESS SAMPLE NUMBER 2, AND YOU SAY, "SAMPLE NUMBER 2

03:03PM 1 WAS ALIQUOTED FROM THE BCD 2.1 NANOTAINERS, PIPETTED DIRECTLY
03:03PM 2 INTO A CARTRIDGE, AND RUN AT THERANOS."

03:03PM 3 AND BELOW THAT YOU SAY, "BOTH CARTRIDGES WERE RUN ON THE
03:03PM 4 SAME READER."

03:03PM 5 DO YOU SEE THAT?

03:03PM 6 A. YES.

03:03PM 7 Q. AND SO IS THIS A SITUATION WHERE TWO SAMPLES FROM THE SAME
03:03PM 8 DONOR WERE RUN ON THE SAME THERANOS READER BUT PRODUCED TWO
03:03PM 9 DIFFERENT RESULTS?

03:03PM 10 A. YES.

03:03PM 11 Q. AND WHY IS THAT A PROBLEM?

03:03PM 12 MS. WALSH: OBJECTION.

03:03PM 13 THE COURT: IT MIGHT BE A FOUNDATIONAL ISSUE. IF
03:04PM 14 YOU WANT TO LAY A FOUNDATION.

03:04PM 15 BY MR. BOSTIC:

03:04PM 16 Q. LET ME ASK, WAS THAT VIEWED AS A PROBLEM AT THERANOS?

03:04PM 17 A. YES.

03:04PM 18 Q. LET'S LOOK AT THE TOP OF PAGE 7, AND ZOOM IN ON
03:04PM 19 MS. HOLMES'S EMAIL WHERE SHE WRITES TO YOU, DANIEL YOUNG, AND
03:04PM 20 SUNNY BALWANI, "THE DISCREPANCY WILL BE A PROBLEM."

03:04PM 21 DO YOU SEE THAT?

03:04PM 22 A. YES.

03:04PM 23 Q. AND WERE YOU A PART OF ANY DISCUSSIONS WITH MS. HOLMES OR
03:04PM 24 MR. BALWANI ABOUT THIS DISCREPANCY, THIS PROBLEM THAT YOU WERE
03:04PM 25 SEEING, BESIDES THIS EMAIL?

03:04PM 1 A. NOT FOR THIS -- I DON'T BELIEVE, ASIDE FROM THIS EMAIL,
03:04PM 2 THERE WAS DISCUSSION ABOUT IT.

03:04PM 3 Q. LET'S FAST FORWARD AND LOOK AT THE RESOLUTION HERE. LET'S
03:04PM 4 GO TO PAGE 4 AND ZOOM IN ON THE TOP PART OF THE PAGE.

03:05PM 5 AND DO YOU SEE HERE AN EMAIL FROM MS. HOLMES ABOUT THIS
03:05PM 6 SAME TOPIC?

03:05PM 7 A. YES.

03:05PM 8 Q. AND AFTER GETTING SOME INFORMATION FROM DANIEL YOUNG, SHE
03:05PM 9 SAYS, "AGREE ON THE PA MEASLES RESULT."

03:05PM 10 DO YOU UNDERSTAND THAT TO REFER TO PALO ALTO?

03:05PM 11 A. YES.

03:05PM 12 Q. SHE SAYS, "AGREE ON THE PA MEASLES RESULT. WE'LL ONLY
03:05PM 13 INCLUDE THAT ONE FROM PA. I WOULD INTEGRATE THE PA ONLY
03:05PM 14 INFECTIOUS RESULTS WITH THE REST OF THE REPORT RESULTS AND THEN
03:05PM 15 ONLY CALL OUT AS INFECTIOUS THE ONES WE SHOW FOR BOTH PALO ALTO
03:05PM 16 AND NEW YORK."

03:05PM 17 DO YOU SEE THAT?

03:05PM 18 A. YES.

03:05PM 19 Q. LET'S GO TO PAGE 3 AND ZOOM IN ON THE TOP HALF OF THE
03:05PM 20 PAGE.

03:06PM 21 DO WE SEE HERE A MESSAGE FROM DANIEL YOUNG ON JUNE 1ST AT
03:06PM 22 5:11 P.M.?

03:06PM 23 DO YOU SEE THAT?

03:06PM 24 A. YES.

03:06PM 25 Q. AND BELOW THE BULLET POINTS IN HIS EMAIL, HE IS ADDRESSING

03:06PM 1 YOU, I BELIEVE, IS THAT RIGHT, WHERE HE SAYS DAN?

03:06PM 2 A. YES.

03:06PM 3 Q. HE SAYS, FOR BILIRUBIN, TOTAL, CAN YOU CHANGE THE
03:06PM 4 REFERENCE RANGE, AND HE PROVIDES A RANGE, AND REMOVE THE
03:06PM 5 L INDICATOR.

03:06PM 6 AND ON CALCIUM HE ALSO ASKS YOU TO CHANGE THE RANGE. HE
03:06PM 7 SAYS IT DOESN'T CHANGE THE OUTCOME, BUT SHOWS THE RESULT TO BE
03:06PM 8 CLOSER TO THE REFERENCE RANGE.

03:06PM 9 DO YOU SEE THAT?

03:06PM 10 A. YES.

03:06PM 11 Q. AND CAN YOU EXPLAIN WHAT IS HAPPENING HERE?

03:06PM 12 A. HERE THE REFERENCE RANGES FOR THE TESTS ARE BEING MODIFIED
03:06PM 13 AND THE RESULTING IMPACT IS THAT CERTAIN OF THE RESULTS COMPARE
03:07PM 14 DIFFERENTLY TO THAT RELATIVE RANGE.

03:07PM 15 Q. FROM YOUR WORK AT THERANOS, DID YOU HAVE AN UNDERSTANDING
03:07PM 16 AS TO WHAT THE TERM "REFERENCE RANGE" MEANT?

03:07PM 17 A. MY UNDERSTANDING IS THAT IF A RESULT FOR A CERTAIN TEST IS
03:07PM 18 WITHIN A REFERENCE RANGE, IT'S CONSIDERED A HEALTHY RESULT.

03:07PM 19 Q. SO, FOR EXAMPLE, FOR THE BILIRUBIN TEST FOR THIS DEMO,
03:07PM 20 THIS EMAIL FROM DANIEL YOUNG SAYS THAT CHANGING THE REFERENCE
03:07PM 21 RANGE AS REQUESTED WOULD ALSO RESULT IN REMOVING THE
03:07PM 22 L INDICATOR.

03:07PM 23 DO YOU SEE THAT?

03:07PM 24 A. YES.

03:07PM 25 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT THE

03:07PM 1 L INDICATOR WOULD MEAN?

03:07PM 2 A. THAT WOULD REFER TO LOW.

03:07PM 3 SO IF A TEST RESULT WAS NOT WITHIN THE REFERENCE RANGE, IT

03:07PM 4 WOULD HAVE AN INDICATION, IN THIS CASE L, BUT IT COULD ALSO

03:07PM 5 HAVE AN INDICATION H FOR HIGH.

03:08PM 6 Q. SO IN THIS CASE CHANGING THE REFERENCE RANGE WOULD RESULT

03:08PM 7 IN THE RESULT NO LONGER BEING LOW; IS THAT CORRECT?

03:08PM 8 A. CORRECT.

03:08PM 9 Q. AND FOR CALCIUM, IS DANIEL YOUNG SAYING THAT THE CHANGE IN

03:08PM 10 REFERENCE RANGE WOULD MAKE THE RESULT CLOSER TO THE REFERENCE

03:08PM 11 RANGE?

03:08PM 12 DO YOU SEE THAT?

03:08PM 13 MS. WALSH: OBJECTION.

03:08PM 14 THE COURT: OVERRULED.

03:08PM 15 YOU CAN ANSWER.

03:08PM 16 THE WITNESS: CAN YOU REPEAT THE QUESTION?

03:08PM 17 BY MR. BOSTIC:

03:08PM 18 Q. SURE. DO YOU SEE IN THE EMAIL DANIEL YOUNG SAYING THAT

03:08PM 19 CHANGING THE REFERENCE RANGE FOR CALCIUM WOULD MAKE THE RESULTS

03:08PM 20 FOR THIS DONOR CLOSER TO THE REFERENCE RANGE?

03:08PM 21 A. YES.

03:08PM 22 Q. SO, IN OTHER WORDS, CLOSER TO THE NORMAL RANGE?

03:08PM 23 A. CORRECT.

03:08PM 24 Q. AND WAS THIS SOMETHING THAT YOU SAW ON MULTIPLE OCCASIONS,

03:08PM 25 DANIEL YOUNG ALTERING RESULTS OR REFERENCES FOR DEMOS THAT TOOK

03:08PM 1 PLACE AT THERANOS?

03:08PM 2 MS. WALSH: OBJECTION. LEADING.

03:08PM 3 THE COURT: WOULD YOU REPHRASE?

03:09PM 4 BY MR. BOSTIC:

03:09PM 5 Q. WAS THIS THE ONLY TIME THAT YOU SAW DANIEL YOUNG DO

03:09PM 6 SOMETHING LIKE THIS AFTER THE FACT WITH DEMO RESULTS, EITHER

03:09PM 7 ADJUSTING THE RESULTS THEMSELVES OR THE REFERENCE RANGES?

03:09PM 8 A. NO.

03:09PM 9 Q. YOU SAW THAT ON OTHER OCCASIONS?

03:09PM 10 A. YES.

03:09PM 11 Q. OKAY. LET'S LOOK AT 871 NEXT, PLEASE, IN YOUR BINDER.

03:09PM 12 AND ONCE YOU HAVE IT, LET ME KNOW IF YOU SEE AT 871

03:09PM 13 ANOTHER EMAIL CHAIN INCLUDING YOU AND MR. BALWANI RELATING TO

03:09PM 14 DEMO COORDINATION.

03:09PM 15 A. YES.

03:09PM 16 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 871.

03:09PM 17 MS. WALSH: NO OBJECTION.

03:09PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:09PM 19 (GOVERNMENT'S EXHIBIT 871 WAS RECEIVED IN EVIDENCE.)

03:09PM 20 MR. BOSTIC: LET'S START AT THE BOTTOM OF THIS PAGE,

03:09PM 21 PAGE 2.

03:09PM 22 Q. DO YOU SEE THAT THIS STARTS WITH AN EMAIL FROM

03:09PM 23 CHRISTIAN HOLMES TO YOU AND OTHERS AT THERANOS; IS THAT RIGHT?

03:10PM 24 A. YES.

03:10PM 25 Q. AND IT SAYS, "SUNNY MENTIONED THAT HE'D LIKE TO RUN A DEMO

03:10PM 1 DURING AN EXEC MEETING NEXT TUESDAY."

03:10PM 2 DO YOU SEE THAT?

03:10PM 3 A. YES.

03:10PM 4 Q. LET'S GO UP ON THIS PAGE, AND ZOOM IN ON THE MIDDLE FEW

03:10PM 5 MESSAGES.

03:10PM 6 DANIEL YOUNG RESPONDS AND ASKS WHETHER THERE'S ANY

03:10PM 7 PREFERENCE FOR DEVICE TYPE, MONOBAY, MINILAB, OR 4S.

03:10PM 8 DO YOU SEE THAT?

03:10PM 9 A. YES.

03:10PM 10 Q. ARE THOSE ALL NEXT GENERATION DEVICES NEVER USED FOR

03:10PM 11 PATIENT TESTING AT THERANOS?

03:10PM 12 MS. WALSH: OBJECTION. LEADING.

03:10PM 13 THE COURT: OVERRULED.

03:10PM 14 THE WITNESS: YES.

03:10PM 15 BY MR. BOSTIC:

03:10PM 16 Q. LET'S ZOOM OUT AND CAPTURE THE TOP OF THIS PAGE.

03:10PM 17 AND YOU WRITE BACK, "JUST CAUGHT UP WITH SUNNY. HE

03:10PM 18 DEFINITELY WANTS TO HAVE A MINILAB AND THEN EITHER A 4S OR

03:10PM 19 MONOBAY (WHICHEVER IS WORKING BETTER)."

03:10PM 20 DO YOU SEE THAT?

03:11PM 21 A. YES.

03:11PM 22 Q. AND THAT PHRASE, "WHICHEVER IS WORKING BETTER," WHAT WAS

03:11PM 23 THE SIGNIFICANCE OF THAT?

03:11PM 24 A. I THINK THAT REFERS TO THE DEVICE CAPABILITIES AND ABILITY

03:11PM 25 TO PROCESS A TEST OR RUN A TEST.

03:11PM 1 Q. AND DURING YOUR TIME AT THERANOS, IS THAT SOMETHING THAT
03:11PM 2 KIND OF VARIED FROM DAY-TO-DAY WHETHER A CERTAIN DEVICE WAS
03:11PM 3 WORKING OR AVAILABLE FOR THIS KIND OF DEMO?

03:11PM 4 A. I THINK I MENTIONED EARLIER THERE WAS A TIME PERIOD WHEN
03:11PM 5 THERE WAS A LITTLE UNCERTAINTY, AND THIS FALLS WITHIN THAT TIME
03:11PM 6 PERIOD.

03:11PM 7 Q. LET'S GO TO PAGE 1, AND LET'S ZOOM IN ON THE BOTTOM HALF
03:11PM 8 OF THE PAGE.

03:11PM 9 THERE'S AN EMAIL FROM YOU AT THE BOTTOM WHERE YOU SAY,
03:11PM 10 FOR TOMORROW'S DEMO, WE'D LIKE TO HAVE A MINILAB AND EITHER A
03:11PM 11 4S OR MONOBAY, WITH THE NORMANDY SHELL UPLOADED.

03:11PM 12 DO YOU SEE THAT?

03:12PM 13 A. YES.

03:12PM 14 Q. AND THEN AT THE BOTTOM YOU SAY, "SAM INDICATED THAT THE
03:12PM 15 DEVICES ARE CAPABLE OF RUNNING A CBC."

03:12PM 16 DO YOU SEE THAT?

03:12PM 17 A. YES.

03:12PM 18 Q. AND YOU ASK THAT FIVE PRACTICE TESTS BE RUN ON EACH DEVICE
03:12PM 19 TO MAKE SURE THAT THEY'RE ABLE TO DO SO?

03:12PM 20 A. YES.

03:12PM 21 Q. AND WHY DID YOU THINK THAT THAT STEP WAS NECESSARY?

03:12PM 22 A. I'M NOT SURE IF I THOUGHT THE STEP WAS NECESSARY, BUT I
03:12PM 23 BELIEVE THAT I WAS PASSING ALONG A REQUEST TO DO THOSE TESTS TO
03:12PM 24 ENSURE THAT THE DEVICES WERE FUNCTIONING IN AN ACCEPTABLE WAY.

03:12PM 25 Q. LET'S ZOOM IN ON THE TOP HALF OF THIS PAGE.

03:12PM 1 DO YOU SEE AT THE BOTTOM OF THAT COLLECTION AN EMAIL FROM
03:12PM 2 MR. BALWANI TO YOU AND DANIEL YOUNG?
03:12PM 3 A. YES.
03:12PM 4 Q. HE SAYS, "GIVEN ML DOESN'T HAVE CYTO, WHAT ARE WE PLANNING
03:12PM 5 ON RUNNING ON ML?"
03:12PM 6 DO YOU SEE THAT?
03:12PM 7 A. YES.
03:12PM 8 Q. AND WHAT WAS ML REFERRING TO?
03:12PM 9 A. THE MINILAB TOWER, I BELIEVE AT THIS TIME.
03:12PM 10 Q. OKAY. THANK YOU.
03:12PM 11 AND WHEN MR. BALWANI SAYS, "THE ML DOESN'T HAVE CYTO," DO
03:13PM 12 YOU HAVE A SENSE OR AN UNDERSTANDING OF WHAT "CYTO" MEANS
03:13PM 13 THERE?
03:13PM 14 A. CYTOMETRY, WHICH WAS A CERTAIN TYPE OF TEST.
03:13PM 15 Q. AND DOES THAT CATEGORY OF TESTS HAVE ANYTHING TO DO WITH
03:13PM 16 THE CBC, COMPLETE BLOOD COUNT, THAT WAS SUPPOSED TO BE RUN
03:13PM 17 HERE?
03:13PM 18 MS. WALSH: OBJECTION. LEADING.
03:13PM 19 THE COURT: OVERRULED.
03:13PM 20 THE WITNESS: YES.
03:13PM 21 BY MR. BOSTIC:
03:13PM 22 Q. DANIEL YOUNG WRITES BACK TO MR. BALWANI. HE SAYS, "RIGHT
03:13PM 23 NOW, WE ARE NOT PLANNING ON RUNNING ANYTHING ON THE ML,
03:13PM 24 UNFORTUNATELY. THE GENERAL CHEMISTRY AND ELISA ASSAYS ARE NOT
03:13PM 25 PERFORMING ADEQUATELY FOR A DEMO AT THE MOMENT."

03:13PM 1 DO YOU SEE THAT?

03:13PM 2 A. YES.

03:13PM 3 Q. AND THEN ABOVE THAT, DO YOU SEE THAT MR. BALWANI FORWARDS
03:13PM 4 THIS TO MS. HOLMES WITH THE COMMENT, "VERY FRUSTRATING"?

03:13PM 5 A. YES.

03:13PM 6 Q. LET'S GO TO TAB 966 NEXT.

03:14PM 7 ONCE YOU'RE THERE, LET ME KNOW WHETHER YOU RECOGNIZE 966
03:14PM 8 AS ANOTHER EMAIL, INTERNAL AT THERANOS, INCLUDING YOU, RELATING
03:14PM 9 TO THE VIP DEMO.

03:14PM 10 A. YES.

03:14PM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 966,
03:14PM 12 AND I'M OFFERING THE EMAIL ONLY, NOT THE ATTACHMENTS.

03:14PM 13 THE WITNESS: I'M SURE, I'M -- I'M NOT SURE IF YOU
03:14PM 14 ASKED WHETHER THE EMAIL WAS FROM ME. I THINK IT'S FROM
03:14PM 15 DANIEL YOUNG HERE.

03:14PM 16 MR. BOSTIC: THANK YOU. I DIDN'T MEAN TO SAY
03:14PM 17 THAT --

03:14PM 18 THE WITNESS: OKAY.

03:14PM 19 BY MR. BOSTIC:

03:14PM 20 Q. -- IF I DID. BUT DOES THIS EMAIL INCLUDE YOU?

03:14PM 21 A. YES.

03:14PM 22 MS. WALSH: NO OBJECTION.

03:14PM 23 THE COURT: JUST THE EMAIL WILL BE ADMITTED, AND IT
03:14PM 24 MAY BE PUBLISHED.

03:14PM 25 (GOVERNMENT'S EXHIBIT 966, EMAIL ONLY, WAS RECEIVED IN

03:14PM 1

EVIDENCE.)

03:14PM 2

MR. BOSTIC: THANK YOU, YOUR HONOR.

03:15PM 3

LET'S ZOOM IN ON THE CONTENT OF THIS EMAIL, SO THE TOP

03:15PM 4

HALF OF PAGE 1.

03:15PM 5

Q. AND DO YOU SEE AN EMAIL FROM DANIEL YOUNG TO YOU,

03:15PM 6

CHRISTIAN HOLMES, ELIZABETH HOLMES, AND SUNNY BALWANI AT

03:15PM 7

THERANOS?

03:15PM 8

A. YES.

03:15PM 9

Q. AND IT ATTACHES WHAT DANIEL YOUNG REFERS TO AS DEMO

03:15PM 10

RESULTS FOR THE SIX SUBJECTS.

03:15PM 11

DO YOU SEE THAT?

03:15PM 12

A. YES.

03:15PM 13

Q. DO YOU RECALL A TIME IN AUGUST OF 2013 WHERE MULTIPLE

03:15PM 14

INDIVIDUALS FROM WALGREENS VISITED THERANOS?

03:15PM 15

A. YES.

03:15PM 16

Q. AND DO YOU KNOW WHETHER AS PART OF THAT VISIT THEY

03:15PM 17

RECEIVED DEMO TESTS OR NOT?

03:15PM 18

A. THEY DID.

03:15PM 19

Q. DANIEL YOUNG WRITES IN HIS EMAIL, LOOKING AT THE SECOND

03:16PM 20

TOPIC THERE -- ACTUALLY, FIRST, LET ME ASK YOU ABOUT ONE

03:16PM 21

QUESTION.

03:16PM 22

IN YOUR BINDER YOU HAVE HARD COPIES OF THE ATTACHMENTS TO

03:16PM 23

THIS EMAIL.

03:16PM 24

DO YOU SEE THAT IN FRONT OF YOU?

03:16PM 25

A. YES.

03:16PM 1 Q. I'LL ASK YOU TO FLIP THROUGH AND SEE IF YOU CAN FIND A
03:16PM 2 NAME. ACTUALLY LOOK AT PAGE 7 OF THE EXHIBIT.
03:16PM 3 AND DO YOU SEE THE NAME NIMESH JHAVERI APPEARING ON
03:16PM 4 PAGE 7?
03:16PM 5 A. YES.
03:16PM 6 Q. AND DO YOU RECOGNIZE THAT NAME?
03:16PM 7 A. YES.
03:16PM 8 Q. AND WHO WAS NIMESH JHAVERI?
03:16PM 9 A. HE WORKED AT WALGREENS.
03:16PM 10 Q. AND GOING BACK TO PAGE 1, OR LOOKING AT THE SCREEN, DO YOU
03:16PM 11 SEE THAT ONE OF THE ATTACHMENTS SAYS LAB REPORT 8-13-2013 NJ?
03:16PM 12 A. YES.
03:16PM 13 Q. IN DANIEL YOUNG'S EMAIL, THE SECOND PARAGRAPH, HE SAYS, "I
03:17PM 14 'CORRECTED' ASSAY RESULTS THAT I ATTRIBUTED TO BCD COLLECTION
03:17PM 15 PROBLEMS."
03:17PM 16 HE SAYS, "THE GC RESULTS LOOK GOOD AFTER SUCH CLEANUP."
03:17PM 17 DO YOU SEE THAT?
03:17PM 18 A. YES.
03:17PM 19 Q. THE QUESTION IS, DO YOU HAVE AN UNDERSTANDING AS TO HOW
03:17PM 20 DANIEL YOUNG WENT ABOUT, QUOTE, "CORRECTING" THE RESULTS FOR
03:17PM 21 DEMOS LIKE THIS?
03:17PM 22 A. I DO NOT.
03:17PM 23 Q. WERE YOU PART OF THAT PROCESS AT ALL?
03:17PM 24 A. NO.
03:17PM 25 Q. LOOKING AT THE FOURTH PARAGRAPH OF HIS EMAIL, HE SAYS,

03:17PM 1 "EACH SUBJECT HAD THE THYROID PANEL PERFORMED. I REMOVED THE
03:17PM 2 THYROID RESULTS THAT I FELT WERE QUESTIONABLE."

03:17PM 3 DO YOU SEE THAT?

03:17PM 4 A. YES.

03:17PM 5 Q. AND HE SAYS, "THERE ARE A FEW OUT OF RANGE RESULTS LEFT IN
03:17PM 6 THE REPORT, BUT THEY ARE VERY CLOSE TO THE REFERENCE RANGE."

03:17PM 7 AND HE SAYS IN PARENTHESES, "(NOTE THAT I THINK THERE IS
03:18PM 8 SOMETHING WRONG WITH THE TT3 ASSAY/REAGENTS, AND AM FOLLOWING
03:18PM 9 UP WITH SHARADA. I REMOVED ALL TT3 RESULTS.)"

03:18PM 10 DO YOU SEE THAT?

03:18PM 11 A. YES.

03:18PM 12 Q. AND THIS WAS IN MID-AUGUST 2013; IS THAT RIGHT?

03:18PM 13 A. YES.

03:18PM 14 Q. AND THAT IS ROUGHLY A MONTH BEFORE THERANOS BEGAN PATIENT
03:18PM 15 TESTING?

03:18PM 16 A. YES.

03:18PM 17 Q. OKAY. WE CAN PUT THAT ASIDE.

03:18PM 18 IF I COULD ASK YOU TO TURN TO TAB 957, PLEASE.

03:18PM 19 LET ME ASK, ON THE EMAIL THAT WE WERE JUST LOOKING AT WITH
03:18PM 20 THE RESULTS FROM WALGREENS, WHAT IS YOUR UNDERSTANDING OF WHY
03:18PM 21 MR. BALWANI WAS INCLUDED ON THAT EMAIL?

03:18PM 22 LET ME ASK IT A DIFFERENT WAY. WHAT WAS MR. BALWANI'S
03:18PM 23 ROLE IN CONNECTION WITH THE WALGREENS PARTNERSHIP AT THIS TIME?

03:18PM 24 A. AT THIS TIME SUNNY OVERSAW THAT RELATIONSHIP WITH
03:19PM 25 WALGREENS.

03:19PM 1 Q. IN THAT ROLE, WAS HE INVOLVED AT ALL WITH THE MEETINGS AND
03:19PM 2 VISITS FROM WALGREENS PERSONNEL?

03:19PM 3 A. YES.

03:19PM 4 Q. I WOULD JUST ASK YOU TO TURN TO TAB 957.

03:19PM 5 DO YOU HAVE THAT IN FRONT OF YOU?

03:19PM 6 A. YES.

03:19PM 7 Q. AND DO YOU SEE AT 957 ANOTHER EMAIL CHAIN AT THERANOS
03:19PM 8 RELATING TO DEMO WORKFLOW?

03:19PM 9 A. YES.

03:19PM 10 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 957.

03:19PM 11 MS. WALSH: OBJECTION. HEARSAY.

03:19PM 12 THE COURT: IS THIS FIVE PAGES, MR. BOSTIC?

03:19PM 13 MR. BOSTIC: YES, YOUR HONOR.

03:19PM 14 THE COURT: IS THIS SUBJECT TO A STIPULATION OR IS
03:20PM 15 THIS 803(6)?

03:20PM 16 MR. BOSTIC: SO, YOUR HONOR, AS TO AUTHENTICITY,
03:20PM 17 THIS DOES FALL WITHIN THE PARTIES' STIPULATION AND I'M OFFERING
03:20PM 18 IT UNDER 803(6). I BELIEVE THAT THIS WITNESS HAS PREVIOUSLY
03:20PM 19 LAID THE FOUNDATION.

03:20PM 20 THE COURT: WHY DON'T YOU JUST LAY THE FOUNDATION
03:20PM 21 BRIEFLY, AND THEN WE'LL GO ON.

03:20PM 22 BY MR. BOSTIC:

03:20PM 23 Q. MR. EDLIN, WE TALKED BEFORE ABOUT THE WAY THAT THE EMAIL
03:20PM 24 WAS USED IN ORDER TO COORDINATE AND COMMUNICATE ABOUT DEMOS; IS
03:20PM 25 THAT RIGHT?

03:20PM 1 A. YES.

03:20PM 2 Q. AND WAS THE USE OF THE EMAIL IN THAT WAY AN IMPORTANT PART

03:20PM 3 OF HOW THESE DEMOS WERE MONITORED AND ARRANGED AND ORGANIZED AT

03:20PM 4 THERANOS?

03:20PM 5 A. YES.

03:20PM 6 Q. AND TO FULFILL THAT PURPOSE, DID THE EMAILS HAVE TO BE

03:20PM 7 ACCURATE?

03:20PM 8 A. YES.

03:20PM 9 Q. AND WERE THE EMAILS RETAINED SO THAT THEY COULD BE

03:20PM 10 REFERENCED BACK LATER, IF NECESSARY?

03:20PM 11 A. I BELIEVE THEY WERE.

03:20PM 12 MR. BOSTIC: YOUR HONOR, I OFFER THIS EXHIBIT 957

03:20PM 13 UNDER 803(6) .

03:20PM 14 MS. WALSH: NO OBJECTION.

03:20PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:20PM 16 (GOVERNMENT'S EXHIBIT 957 WAS RECEIVED IN EVIDENCE.)

03:21PM 17 BY MR. BOSTIC:

03:21PM 18 Q. AND LET'S START WITH PAGE 2 OF THIS EXHIBIT AND ZOOM IN ON

03:21PM 19 THE MIDDLE OF THE PAGE.

03:21PM 20 MR. EDLIN, DO YOU RECALL THAT WE WERE JUST LOOKING AT AN

03:21PM 21 EMAIL ATTACHING SIX LAB REPORTS FROM A DEMO IN MID-AUGUST 2013?

03:21PM 22 A. YES.

03:21PM 23 Q. AND YOU SEE HERE AN EMAIL FROM YOU MENTIONING, "WE WILL BE

03:21PM 24 COLLECTING FINGERSTICK SAMPLES VERY SOON. PLEASE BE ON

03:21PM 25 STANDBY."

03:21PM 1 A. I DO.

03:21PM 2 Q. AND THEN YOU SAY, "WE HAVE SIX SAMPLES; PLEASE MEET IN THE

03:21PM 3 LAB FOR THE HANDOFF."

03:21PM 4 A. YES.

03:21PM 5 Q. DOES THIS MEAN THAT THE SAMPLES WERE NOT BEING PROCESSED

03:21PM 6 IN A CONFERENCE ROOM?

03:21PM 7 A. YES.

03:21PM 8 Q. CAN YOU EXPLAIN WHAT THAT MEANS THEN? WHERE WERE THEY

03:21PM 9 PROCESSED? WHERE WERE THE TESTS RUN?

03:21PM 10 A. I'M NOT EXACTLY SURE WHERE THEY WERE RUN, BUT IN THIS

03:22PM 11 INSTANCE I MET THE LABORATORY PERSONNEL IN THE R&D LAB, HANDED

03:22PM 12 OFF THE SAMPLES TO THEM, AND THEN THAT WAS THE EXTENT OF MY

03:22PM 13 INVOLVEMENT.

03:22PM 14 Q. LET'S GO TO PAGE 1 OF THIS EXHIBIT AND ZOOM IN ON THE

03:22PM 15 BOTTOM.

03:22PM 16 AND DO YOU SEE AT THE BOTTOM THERE THAT'S AN EMAIL FROM

03:22PM 17 NICHOLAS HAASE?

03:22PM 18 A. YES.

03:22PM 19 Q. AND WHAT WAS HIS POSITION AT THE COMPANY?

03:22PM 20 A. I BELIEVE HE WAS A SCIENTIST.

03:22PM 21 Q. HE SAYS, "UPDATE: WE JUST STARTED THE ADVIA RUN OF ALL

03:22PM 22 SAMPLES."

03:22PM 23 DO YOU SEE THAT?

03:22PM 24 A. I DO.

03:22PM 25 Q. AND WHAT DOES ADVIA REFER TO THERE?

03:22PM 1 A. A THIRD PARTY DEVICE.

03:22PM 2 Q. OKAY. SO THAT'S A BLOOD ANALYZER THAT WASN'T BUILT BY

03:22PM 3 THERANOS?

03:22PM 4 A. CORRECT.

03:22PM 5 Q. DO YOU KNOW WHETHER YOU WERE IN THIS MEETING IN MID-2013

03:23PM 6 WITH THE WALGREENS PERSONNEL?

03:23PM 7 A. I DON'T RECALL WHETHER I WAS IN A PART OF THE MEETING.

03:23PM 8 I KNOW THAT I WAS NOT IN THE ENTIRE MEETING.

03:23PM 9 Q. DO YOU KNOW ONE WAY OR THE OTHER WHETHER THE WALGREENS

03:23PM 10 VIP'S WERE TOLD THAT THEIR SAMPLES WERE BEING RUN NOT ON

03:23PM 11 THERANOS DEVICES, BUT ON THIRD PARTY ANALYZERS?

03:23PM 12 MS. WALSH: OBJECTION. FOUNDATION.

03:23PM 13 THE COURT: OVERRULED.

03:23PM 14 YOU CAN ANSWER THE QUESTION IF YOU KNOW.

03:23PM 15 BY MR. BOSTIC:

03:23PM 16 Q. CAN I REPEAT THAT QUESTION FOR YOU, MR. EDLIN?

03:23PM 17 A. SURE.

03:23PM 18 Q. THE QUESTION WAS, DO YOU KNOW ONE WAY OR THE OTHER WHETHER

03:23PM 19 THE WALGREENS VIP'S WERE TOLD THAT THEIR SAMPLES WERE BEING RUN

03:23PM 20 NOT ON THERANOS DEVICES, BUT ON THIRD PARTY ANALYZERS?

03:23PM 21 A. I DON'T KNOW.

03:23PM 22 Q. LET'S GO TO TAB 1014, PLEASE.

03:24PM 23 AND LOOKING AT TAB 1014, DO YOU SEE ANOTHER INTERNAL EMAIL

03:24PM 24 AT THERANOS RELATING TO A DEMONSTRATION IN AUGUST?

03:24PM 25 A. YES.

03:24PM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1014.

03:24PM 2 MS. WALSH: NO OBJECTION.

03:24PM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:24PM 4 (GOVERNMENT'S EXHIBIT 1014 WAS RECEIVED IN EVIDENCE.)

03:24PM 5 BY MR. BOSTIC:

03:24PM 6 Q. AND LET'S START ON PAGE 4.

03:24PM 7 A. OKAY.

03:24PM 8 Q. MR. EDLIN, DO YOU RECALL AROUND THIS TIME IN AUGUST 2013

03:24PM 9 WORKING ON A DEMONSTRATION FOR A WRITER WITH "THE

03:24PM 10 WALL STREET JOURNAL"?

03:24PM 11 A. YES.

03:24PM 12 Q. DO YOU RECALL THAT WRITER'S NAME?

03:24PM 13 A. JOE RAGO.

03:24PM 14 Q. IN AN EMAIL FROM YOU -- AND LET'S ZOOM IN ON YOUR EMAIL

03:24PM 15 FROM AUGUST 20TH AT 3:51.

03:25PM 16 YOU SAY, "THIS THURSDAY 8/22 WE WILL BE HOSTING A DEMO AT

03:25PM 17 OUR OFFICES. THERE WILL BE ONE MALE PATIENT, ONE FINGERSTICK

03:25PM 18 DRAW, AND TIMING IS TBD."

03:25PM 19 DO YOU SEE THAT?

03:25PM 20 A. YES.

03:25PM 21 Q. YOU SAY, "PLANNED TESTS WILL CONSIST OF SOME COMBINATION

03:25PM 22 OF THE FOLLOWING: CBC, CHEM 14, LIPIDS, THYROID PANEL OR MALE

03:25PM 23 HEALTH."

03:25PM 24 IS THAT RIGHT?

03:25PM 25 A. YES.

03:25PM 1 Q. AND THEN YOU SAY, "FOR THIS DEMO, WE WILL NEED TO TURN
03:25PM 2 AROUND RESULTS FASTER THAN EVER BEFORE -- IDEALLY IN 1 HOUR AND
03:25PM 3 NO LONGER THAN 2 HOURS.

03:25PM 4 DO YOU SEE THAT?

03:25PM 5 A. YES.

03:25PM 6 Q. AND DO YOU KNOW WHY THIS DEMO NEEDED TO BE COMPLETED,
03:25PM 7 QUOTE, "FASTER THAN EVER BEFORE"?

03:25PM 8 A. WELL, TYPICALLY FOR DEMOS THE RESULT WOULD BE RETURNED BY
03:25PM 9 THE END OF THE BUSINESS DAY.

03:25PM 10 IN THIS SCENARIO, ELIZABETH WANTED THE RESULTS TO BE
03:26PM 11 RETURNED BEFORE THE END OF THE MEETING, AND FROM THE POINT OF
03:26PM 12 THIS DEMO, THE MEETING WOULD HAVE ENDED AFTER ONE OR TWO HOURS
03:26PM 13 AFTER THE SAMPLE IS TAKEN.

03:26PM 14 Q. AND THIS KIND OF SPEED, THIS KIND OF TURN-AROUND TIME ON A
03:26PM 15 DEMO IS SOMETHING THAT THERANOS HADN'T DONE BEFORE; IS THAT
03:26PM 16 RIGHT?

03:26PM 17 MS. WALSH: OBJECTION. LEADING.

03:26PM 18 THE COURT: SUSTAINED.

03:26PM 19 BY MR. BOSTIC:

03:26PM 20 Q. LOOKING AT YOUR EMAIL WHERE YOU SAY, "WE WILL NEED TO TURN
03:26PM 21 AROUND RESULTS FASTER THAN EVER BEFORE," HAD THERANOS
03:26PM 22 PREVIOUSLY BEEN CAPABLE OF TURNING AROUND DEMO RESULTS IN THIS
03:26PM 23 KIND OF TIME PERIOD?

03:26PM 24 A. I THINK THE COMPANY WAS CAPABLE OF IT, BUT IT HAD NOT DONE
03:26PM 25 THAT.

03:26PM 1 Q. LOOKING AT YOUR EMAIL FURTHER DOWN, YOU SAY, "SAM AND
03:26PM 2 MICHAEL -- SIMILAR TO LAST WEEK, PLEASE SET UP TWO MINILABS,
03:27PM 3 ONE 4S, AND ONE 3.5 IN INTERVIEW ROOM NUMBER 1."
03:27PM 4 DO YOU SEE THAT?
03:27PM 5 A. YES.
03:27PM 6 Q. ARE ALL OF THOSE DEVICES THERANOS BUILT DEVICES?
03:27PM 7 A. YES.
03:27PM 8 Q. AND YOU SAY, "THE MINILABS, 4S, AND 3.5 SHOULD HAVE THE
03:27PM 9 DEMO APP THAT CAN RUN NULL PROTOCOLS."
03:27PM 10 DO YOU SEE THAT?
03:27PM 11 A. YES.
03:27PM 12 Q. LET'S GO TO PAGE 2.
03:27PM 13 DO YOU SEE AT THE BOTTOM OF PAGE 2 THAT YOU WERE HEADING
03:27PM 14 IN, ACCORDING TO YOUR EMAIL, TO COLLECT THE FINGERSTICK SAMPLE?
03:27PM 15 A. YES.
03:27PM 16 Q. LET'S LOOK AT THE TOP OF PAGE 2.
03:27PM 17 AND DO YOU SEE THERE AN EMAIL FROM YOU TO MR. BALWANI?
03:27PM 18 A. YES.
03:27PM 19 Q. AND YOU SAY, "UNFORTUNATELY BY THE LOOKS OF THE THYROID
03:28PM 20 PANEL RESULTS BELOW IT APPEARS TO HAVE HAD MAJOR ISSUES AGAIN."
03:28PM 21 DO YOU SEE THAT?
03:28PM 22 A. YES.
03:28PM 23 Q. A COUPLE OF QUESTIONS THERE. FIRST OF ALL, YOU SAY "IT
03:28PM 24 APPEARS TO HAVE HAD MAJOR ISSUES AGAIN."
03:28PM 25 WAS THIS NOT THE FIRST TIME THAT YOU WERE AWARE OF THE

03:28PM 1 THYROID PANEL HAVING PROBLEMS?

03:28PM 2 A. THAT'S RIGHT.

03:28PM 3 Q. WHAT DO YOU REMEMBER ABOUT PROBLEMS WITH THAT PARTICULAR

03:28PM 4 ASSAY?

03:28PM 5 A. I REMEMBER THAT THE RESULTS FROM TESTS ON THAT ASSAY WERE

03:28PM 6 NOT VIABLE.

03:28PM 7 Q. AND WAS THIS IN THE CONTEXT OF DEMO TESTING OR OTHER R&D

03:28PM 8 WORK? WHERE DID THAT UNDERSTANDING COME FROM?

03:28PM 9 A. I DON'T REMEMBER SPECIFICALLY, BUT I THINK IT WAS IN

03:28PM 10 CONNECTION WITH A DEMO, OTHERWISE -- AND I SAY THAT BECAUSE

03:28PM 11 THAT WAS MY INVOLVEMENT. SO IT'S POSSIBLE THAT THERE WERE

03:29PM 12 PRACTICE TESTS DONE AT SOME EARLIER POINT.

03:29PM 13 Q. IF YOU LOOK AT THE BOTTOM OF PAGE 1, YOU SEE THE HEADER

03:29PM 14 INFORMATION FOR THE EMAIL THAT WE'RE LOOKING AT.

03:29PM 15 AND YOU SEND THIS EMAIL JUST TO SUNNY BALWANI; IS THAT

03:29PM 16 RIGHT?

03:29PM 17 A. YES.

03:29PM 18 Q. WHY DID YOU SEND THIS EMAIL DIRECTLY TO MR. BALWANI? WHY

03:29PM 19 HIM?

03:29PM 20 A. I DON'T REMEMBER EXACTLY.

03:29PM 21 Q. WHAT ROLE DID MR. BALWANI HAVE GENERALLY WHEN IT CAME TO

03:29PM 22 DEMOS LIKE THIS ONE?

03:29PM 23 A. OFTEN SUNNY WAS KEPT IN THE LOOP IF A DEMO WAS FOR A GUEST

03:29PM 24 OR A GROUP OF PEOPLE THAT WOULD HAVE BEEN, YOU KNOW, RELEVANT

03:29PM 25 TO HIM OR THAT HE WAS INTERESTED IN KNOWING ABOUT.

03:30PM 1 Q. OKAY. GOING BACK TO YOUR EMAIL AT THE TOP OF PAGE 2.

03:30PM 2 A. YES.

03:30PM 3 Q. YOU SAY, "THE THYROID PANEL APPEARS TO HAVE HAD MAJOR
03:30PM 4 ISSUES AGAIN."

03:30PM 5 YOU GO ON TO SAY, "THIS IS AFTER CALIBRATION WAS RE-DONE
03:30PM 6 YESTERDAY, AFTER A CLINICAL CORRECTION WAS PUT IN PLACE FOR
03:30PM 7 TT3, AND AFTER DANIEL REVIEWED RECENT DATA AND SAID HE WAS
03:30PM 8 CONFIDENT THAT AT LEAST 5 OF THESE RESULTS WOULD WORK."

03:30PM 9 DO YOU SEE THAT?

03:30PM 10 A. YES.

03:30PM 11 Q. LET'S GO TO PAGE 1 AND LOOK AT MR. BALWANI'S REACTION.

03:30PM 12 A. OKAY.

03:30PM 13 Q. AND DO YOU SEE THE EMAIL FROM HIM WHERE HE SAYS, "TO SAY
03:30PM 14 THIS IS DEEPLY DISAPPOINTING WILL BE A GROSS UNDERSTATEMENT"?

03:30PM 15 A. I DO.

03:30PM 16 Q. HE SAYS, "WE HAVE BEEN ASKING TO GET THIS CARTRIDGE BUILT
03:30PM 17 AND QAED AND TESTED FOR MONTHS NOW AND EVERY SINGLE RUN WE HAVE
03:31PM 18 HAD ON THYROID PANEL HAS BEEN A DISASTER."

03:31PM 19 DO YOU SEE THAT?

03:31PM 20 A. YES.

03:31PM 21 Q. AND THIS IS ABOUT ONE WEEK BEFORE THE END OF AUGUST; IS
03:31PM 22 THAT RIGHT?

03:31PM 23 A. YES.

03:31PM 24 Q. AND ONE MONTH BEFORE THERANOS BEGAN PATIENT TESTING?

03:31PM 25 A. YES.

03:31PM 1 Q. LET'S LOOK AT THE EMAIL ABOVE THAT FROM

03:31PM 2 SUREKHA GANGADKHEDKAR.

03:31PM 3 DO YOU SEE HERE ANOTHER REPORT SENT DIRECTLY TO

03:31PM 4 MR. BALWANI, INCLUDING YOU AND DANIEL YOUNG, REGARDING THESE

03:31PM 5 RESULTS?

03:31PM 6 A. YES.

03:31PM 7 Q. AND SUREKHA GANGADKHEDKAR SAYS, "WITH THE PRESENT RUN,

03:31PM 8 HERE IS THE BREAK-UP OF THE RESULTS," AND THEN SHE PROVIDES A

03:31PM 9 NUMBERED LIST.

03:31PM 10 A. YES.

03:31PM 11 Q. SHE NOTES NUMBER 2, THERE'S AN ASSAY THAT WAS OORL DUE TO

03:31PM 12 SUBSTRATE EVAPORATION.

03:31PM 13 DO YOU KNOW WHAT OORL STOOD FOR AT THERANOS?

03:31PM 14 A. OUT OF RANGE LOW.

03:31PM 15 Q. UNDER NUMBER 4 FOR THE TT3 ASSAY, SHE NOTES THAT THAT WAS

03:32PM 16 ALSO WAS OUT OF RANGE LOW; IS THAT CORRECT?

03:32PM 17 A. YES.

03:32PM 18 Q. AND SHE SAYS AT THE BOTTOM THAT "THIS POINTS TO

03:32PM 19 CARRY-OVER/CONTAMINATION DURING THE RUN AND NOT RELATED TO

03:32PM 20 ASSAY ISSUES."

03:32PM 21 DO YOU SEE THAT?

03:32PM 22 A. YES.

03:32PM 23 Q. AND THEN FOR NUMBER 6 SHE SAYS "FT-4 -- RESULT REPORTED,

03:32PM 24 HIGH."

03:32PM 25 DO YOU SEE THAT?

03:32PM 1 A. YES.

03:32PM 2 Q. AND SHE SAYS, "SINCE WE DO NOT HAVE SAMPLE TO TEST ON THE

03:32PM 3 REFERENCE METHOD, NOT POSSIBLE TO MAKE A CONCLUSION ON THE HIGH

03:32PM 4 RESULTS."

03:32PM 5 DID I READ THAT CORRECTLY?

03:32PM 6 A. YES.

03:32PM 7 Q. AND FINALLY AT THE TOP OF THIS PAGE, DO YOU SEE THAT

03:32PM 8 MR. BALWANI TOOK THE STEP TO FORWARD THAT INFORMATION TO

03:32PM 9 MS. HOLMES?

03:32PM 10 A. I DO.

03:32PM 11 Q. LET'S LOOK AT 1157 NEXT.

03:33PM 12 AND AT 1157, DO YOU SEE AN EMAIL FROM YOU TO OTHERS AT

03:33PM 13 THERANOS RELATING TO A DEMO THE FOLLOWING DAY?

03:33PM 14 A. YES.

03:33PM 15 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1157.

03:33PM 16 MS. WALSH: IF IT'S 803(6), I HAVE NO OBJECTION,

03:33PM 17 YOUR HONOR.

03:33PM 18 MR. BOSTIC: IT IS.

03:33PM 19 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

03:33PM 20 (GOVERNMENT'S EXHIBIT 1157 WAS RECEIVED IN EVIDENCE.)

03:33PM 21 BY MR. BOSTIC:

03:33PM 22 Q. AND LET'S ZOOM IN ON THE TOP HALF OF PAGE 1.

03:33PM 23 MR. EDLIN, DO YOU SEE THAT THIS RELATES TO A DEMO THAT WAS

03:33PM 24 GOING TO HAPPEN APPARENTLY ON SEPTEMBER 24TH, 2013?

03:33PM 25 A. YES.

03:33PM 1 Q. AT THIS POINT HAD THERANOS BEGUN PATIENT TESTING YET?

03:33PM 2 A. YES.

03:33PM 3 Q. IN THIS EMAIL, PAUL PATEL WRITES, "DANIEL,

03:33PM 4 "ARE WE EXPECTING TO RUN THIS SAMPLE ON ADVIA?"

03:34PM 5 DO YOU SEE THAT QUESTION?

03:34PM 6 A. YES.

03:34PM 7 Q. AND ON THE TOP WE SEE YOUR EMAIL RESPONSE.

03:34PM 8 YOU SAY, "PLEASE PLAN ON RUNNING THIS SAMPLE USING THE

03:34PM 9 SAME PROCESSES AS LAST WEEK, IE, THE CURRENT WORKFLOW IN

03:34PM 10 NORMANDY."

03:34PM 11 WHAT DOES THAT MEAN, "THE CURRENT WORKFLOW IN NORMANDY"?

03:34PM 12 A. I THINK THAT REFERS TO HOW THE NORMANDY LAB OPERATED.

03:34PM 13 Q. OKAY. WAS THAT THE LAB RUNNING PATIENT TESTS?

03:34PM 14 A. I'M NOT SURE.

03:34PM 15 Q. YOU GO ON TO SAY IN THAT EMAIL, "TO ANSWER PAUL'S

03:34PM 16 QUESTION, I BELIEVE THAT ADVIA IS USED FOR THIS FOR GC ASSAYS."

03:34PM 17 DO YOU SEE THAT?

03:34PM 18 A. I DO.

03:34PM 19 Q. AND DID YOU TESTIFY EARLIER THAT ADVIA WAS A NON-THERANOS

03:34PM 20 THIRD PARTY DEVICE?

03:34PM 21 A. YES, AND AT THIS POINT I WAS LIKELY PASSING INFORMATION

03:34PM 22 FROM DANIEL YOUNG TO PAUL.

03:35PM 23 Q. LET'S GO BACK, JUST BRIEFLY, TO PAGE 2 AND ZOOM IN ON THE

03:35PM 24 BOTTOM HALF.

03:35PM 25 AND WE SEE HERE AN EMAIL FROM YOU, AGAIN, RELATING TO

03:35PM 1 COORDINATION OF THIS DEMO?

03:35PM 2 A. YES.

03:35PM 3 Q. AND AT THE BOTTOM YOU SAY, "SAM AND MICHAEL -- WE WILL

03:35PM 4 ALSO NEED TO SET UP MINILABS AND A 4S IN INTERVIEW ROOM NUMBER

03:35PM 5 1."

03:35PM 6 DO YOU SEE THAT?

03:35PM 7 A. YES.

03:35PM 8 Q. AND WAS EITHER THE MINILAB OR THE 4S PART OF THE WORKFLOW

03:35PM 9 IN THE THERANOS CLINICAL LAB?

03:35PM 10 A. NOT TO MY KNOWLEDGE.

03:35PM 11 Q. ALL RIGHT. SO, IN OTHER WORDS, IS THIS A SITUATION WHERE

03:35PM 12 THE NEXT GENERATION DEVICES WERE SET UP IN A CONFERENCE ROOM

03:35PM 13 WHERE THE MEETING WAS HELD, BUT THOSE DEVICES WERE NEVER USED

03:35PM 14 FOR CLINICAL PATIENT TESTING?

03:36PM 15 MS. WALSH: OBJECTION. LEADING.

03:36PM 16 THE COURT: IT WAS LEADING. I'LL ALLOW IT.

03:36PM 17 YOU CAN ANSWER THE QUESTION.

03:36PM 18 THE WITNESS: CAN YOU REPEAT THE QUESTION, PLEASE?

03:36PM 19 MR. BOSTIC: SURE.

03:36PM 20 Q. ARE WE LOOKING AT A SITUATION WHERE NEXT GENERATION

03:36PM 21 DEVICES, NOT USED FOR CLINICAL PATIENT TESTING, WERE SET UP IN

03:36PM 22 THE ACTUAL CONFERENCE ROOM?

03:36PM 23 A. YES.

03:36PM 24 Q. OKAY. FINALLY, LET'S LOOK AT TAB 3070, 3070.

03:36PM 25 AND DO YOU SEE HERE AN EMAIL CHAIN INCLUDING YOU,

03:36PM 1 MS. HOLMES, AND MR. BALWANI RELATING TO A TEST FOR A VIP GUEST?

03:36PM 2 A. YES.

03:36PM 3 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 3070,

03:37PM 4 AND WE'RE GOING TO REDACT THE PATIENT NAME.

03:37PM 5 MS. WALSH: NO OBJECTION.

03:37PM 6 THE COURT: IT'S ADMITTED. SUBJECT TO REDACTION, IT

03:37PM 7 MAY BE PUBLISHED.

03:37PM 8 (GOVERNMENT'S EXHIBIT 3070 WAS RECEIVED IN EVIDENCE.)

03:37PM 9 BY MR. BOSTIC:

03:37PM 10 Q. AND LET'S GO FIRST TO THE BOTTOM OF PAGE 1, AND WE SEE

03:37PM 11 THAT WE'RE ABOUT TO LOOK AT AN EMAIL FROM YOU, MR. EDLIN, ON

03:37PM 12 DECEMBER 27TH, 2015; IS THAT CORRECT?

03:37PM 13 A. YES.

03:37PM 14 Q. SO YEARS AFTER THERANOS HAD BEGUN PATIENT TESTING?

03:37PM 15 A. OVER TWO YEARS, YES.

03:37PM 16 Q. AND LET'S TURN THE PAGE. THE SUBJECT LINE SAYS MESSAGING

03:37PM 17 FOR VIP GUESTS.

03:37PM 18 AND LOOKING AT THE CONTENT OF THE EMAIL, LET'S ZOOM IN ON

03:37PM 19 THE TOP. IT SAYS -- YOU WRITE, "YESTERDAY WE SENT DR.," AND

03:37PM 20 WE'VE REDACTED THE NAME, "HIS RESULTS FROM THE STUDY IN WHICH

03:37PM 21 WE COMPARE FINGERSTICK CTN RESULTS TO VENOUS RESULTS RUN AT

03:37PM 22 THERANOS, ARUP, AND UCSF."

03:38PM 23 DO YOU SEE THAT?

03:38PM 24 A. YES.

03:38PM 25 Q. YOU THEN SAY, "WE WERE UNABLE TO RETURN 5 TEST RESULTS FOR

03:38PM 1 THE CTN FOR THE FOLLOWING REASONS."

03:38PM 2 WHAT WAS THE CTN?

03:38PM 3 A. IT STANDS FOR CAPILLARY TUBE AND NANOTAINER, AND IT WAS A
03:38PM 4 THERANOS MANUFACTURED DEVICE THAT COLLECTED A BLOOD SAMPLE FROM
03:38PM 5 A FINGERSTICK.

03:38PM 6 Q. AND WAS THE CTN USED WITH THERANOS SPECIFIC TESTS OR WAS
03:38PM 7 IT ALSO USED WITH REGULAR COMMERCIALLY AVAILABLE TESTS, IF YOU
03:38PM 8 KNOW?

03:38PM 9 A. I BELIEVE IT WAS RUN IN CONNECTION TO THERANOS SPECIFIC
03:38PM 10 TESTS.

03:38PM 11 Q. OKAY. SO YOU'RE WRITING THAT THE LAB WAS UNABLE TO RETURN
03:38PM 12 FIVE TEST RESULTS FOR THE THERANOS METHODS FOR THE FOLLOWING
03:38PM 13 REASONS.

03:38PM 14 UNDER NUMBER 1, POTASSIUM, CHLORIDE, AND SODIUM?

03:38PM 15 A. YES.

03:38PM 16 Q. YOU WRITE, "SAMPLE BECAME CONTAMINATED DURING
03:39PM 17 CENTRIFUGATION."

03:39PM 18 DO YOU SEE THAT?

03:39PM 19 A. YES.

03:39PM 20 Q. UNDER PART B THERE FOR THOSE SAME ASSAYS UNDER ROOT CAUSE,
03:39PM 21 YOU WRITE, "THE CONTAMINATION OF THE CTN IS NOT DUE TO ANY
03:39PM 22 HUMAN ERROR."

03:39PM 23 DO YOU SEE THAT?

03:39PM 24 A. YES, AND IN THIS CASE I WAS RELAYING INFORMATION DIRECTLY
03:39PM 25 FROM TINA.

03:39PM 1 Q. AND YOUR UNDERSTANDING AGAIN, APPARENTLY FROM TINA, WAS
03:39PM 2 THAT, QUOTE, "WE DON'T KNOW HOW OR WHY THIS HAPPENED"; IS THAT
03:39PM 3 RIGHT?
03:39PM 4 A. YES.
03:39PM 5 Q. AND THEN GOING DOWN TO ITEM 2 IN THE LIST FOR CALCIUM AND
03:39PM 6 TOTAL PROTEIN?
03:39PM 7 A. YES.
03:39PM 8 Q. YOU WRITE, "THESE TWO RESULTS WERE STATISTICALLY
03:39PM 9 SIGNIFICANTLY TOO HIGH RELATIVE TO THE VENOUS REPORT."
03:39PM 10 DO YOU SEE THAT?
03:39PM 11 A. YES.
03:39PM 12 Q. CAN YOU EXPLAIN WHAT THAT MEANS? WHAT WAS BEING COMPARED
03:39PM 13 IN THIS CASE?
03:39PM 14 A. IN THIS CASE RESULTS FROM A FINGERSTICK WERE BEING
03:39PM 15 COMPARED TO RESULTS FROM A VENIPUNCTURE.
03:40PM 16 Q. OKAY. AND UNDER B WHERE IT SAYS ROOT CAUSE, YOU WRITE,
03:40PM 17 "UNKNOWN."
03:40PM 18 DO YOU SEE THAT?
03:40PM 19 A. YES. AND, AGAIN, IN THIS CASE I WAS PASSING ALONG
03:40PM 20 INFORMATION FROM A SCIENTIST.
03:40PM 21 Q. OKAY. LET'S LOOK AT PAGE 1 TO GET SOME MORE DETAILS ABOUT
03:40PM 22 WHO THIS DONOR WAS, WHO THIS SUBJECT WAS.
03:40PM 23 ZOOM IN ON THE BOTTOM HALF OF THE PAGE.
03:40PM 24 AND DO YOU SEE AN EMAIL FROM CHRISTIAN HOLMES TO HIS
03:40PM 25 SISTER, ELIZABETH HOLMES, AND SUNNY BALWANI?

03:40PM 1 A. YES.

03:40PM 2 Q. AND HE SAYS, "FYI -- THIS IS THE DOC EAH MET AT FORBES

03:40PM 3 CONFERENCE AND INVITED TO DO COMPARISON."

03:40PM 4 DO YOU SEE THAT?

03:40PM 5 A. YES.

03:40PM 6 Q. AND CHRISTIAN HOLMES WRITES, "HE WAS VERY PLEASANT IN

03:40PM 7 PERSON BUT NOTED HE INTENDS TO WRITE ABOUT HIS EXPERIENCE AND

03:40PM 8 RESULTS."

03:40PM 9 DO YOU SEE THAT?

03:40PM 10 A. YES.

03:40PM 11 Q. LOOKING AT THAT EMAIL, YOU ARE NOT INCLUDED ON THAT

03:40PM 12 PARTICULAR EMAIL MESSAGE; IS THAT CORRECT?

03:40PM 13 A. THAT'S CORRECT.

03:40PM 14 Q. AND GOING UP TO THE MESSAGE ABOVE THAT, WE SEE A RESPONSE

03:41PM 15 FROM MS. HOLMES.

03:41PM 16 A. YES.

03:41PM 17 Q. AND THAT ONE DOES INCLUDE YOU; CORRECT?

03:41PM 18 A. YES.

03:41PM 19 Q. AND SHE WRITES, "YOU CAN SAY WE DO RUN THOSE ASSAYS, BUT

03:41PM 20 WERE NOT ABLE TO RUN THEM ON THIS SAMPLE, APPARENTLY DUE TO A

03:41PM 21 HUMAN ERROR IN SAMPLE HANDLING."

03:41PM 22 DO YOU SEE THAT?

03:41PM 23 A. YES.

03:41PM 24 Q. MS. HOLMES IS SAYING TO TELL THE DOCTOR THAT THE ASSAYS

03:41PM 25 COULD NOT BE RUN ON THE SAMPLE; IS THAT CORRECT?

03:41PM 1 A. YES.

03:41PM 2 Q. IN FACT, WEREN'T THE ASSAYS RUN ON THIS SAMPLE?

03:41PM 3 A. YES.

03:41PM 4 Q. SHE ALSO SAYS TO TELL THE DOCTOR THAT THE PROBLEM WAS,

03:41PM 5 QUOTE, "DUE TO A HUMAN ERROR IN SAMPLE HANDLING."

03:41PM 6 DO YOU SEE THAT?

03:41PM 7 A. YES.

03:41PM 8 Q. HADN'T YOU JUST REPORTED THAT YOUR UNDERSTANDING FROM TINA

03:41PM 9 WAS THAT THE CONTAMINATION WAS NOT DUE TO ANY HUMAN ERROR?

03:41PM 10 A. THAT WAS HER UNDERSTANDING, YES.

03:42PM 11 Q. AND WHEN YOU SAY "HER UNDERSTANDING," DO YOU MEAN TINA'S

03:42PM 12 UNDERSTANDING?

03:42PM 13 A. I DO.

03:42PM 14 Q. AT THE TIME, IN DECEMBER OF 2015, DID YOU NOTE THE

03:42PM 15 INCONSISTENCY BETWEEN WHAT MS. HOLMES WAS SAYING SHOULD BE

03:42PM 16 REPRESENTED AND WHAT WAS BEING DISCUSSED INTERNALLY?

03:42PM 17 A. I'M NOT SURE WHAT YOU MEAN.

03:42PM 18 Q. SITTING HERE TODAY, DO YOU SEE THE INCONSISTENCY BETWEEN

03:42PM 19 WHAT MS. HOLMES IS SAYING SHOULD BE SAID TO THE DOCTOR AND WHAT

03:42PM 20 ACTUALLY HAPPENED AT THERANOS?

03:42PM 21 A. I DO.

03:42PM 22 MS. WALSH: OBJECTION. RELEVANCE.

03:42PM 23 THE COURT: OVERRULED.

03:42PM 24 THE WITNESS: I DO NOTE THE INCONSISTENCY, YES.

03:42PM 25 BY MR. BOSTIC:

03:42PM 1 Q. SO MY QUESTION IS, AT THE TIME IN DECEMBER OF 2015, DID
03:42PM 2 YOU NOTICE THAT INCONSISTENCY?

03:42PM 3 A. I'M NOT SURE WHETHER -- I DON'T REMEMBER.

03:43PM 4 Q. OKAY. WE CAN PUT THAT ASIDE.

03:43PM 5 I'D LIKE TO MOVE ON, IN OUR REMAINING TIME TODAY, TO A
03:43PM 6 DIFFERENT TOPIC AND TALK ABOUT YOUR INVOLVEMENT IN THE
03:43PM 7 MARKETING OF THERANOS AND SOME MEDIA RELATIONS INVOLVING THE
03:43PM 8 COMPANY. OKAY?

03:43PM 9 A. OKAY.

03:43PM 10 Q. FIRST, LET'S START WITH THE THERANOS WEBSITE.

03:43PM 11 DO YOU RECALL A TIME WHEN THERANOS WAS PREPARING TO LAUNCH
03:43PM 12 A NEW VERSION OF ITS PUBLIC WEBSITE?

03:43PM 13 A. YES.

03:43PM 14 Q. AND WHEN DID THAT TAKE PLACE?

03:43PM 15 A. IT TOOK PLACE IN 2013 LEADING UP TO THE LAUNCH WITH
03:43PM 16 WALGREENS.

03:43PM 17 Q. DO YOU KNOW APPROXIMATELY WHAT MONTH THAT WOULD HAVE BEEN
03:43PM 18 THEN, OR MONTHS THAT WE WOULD BE TALKING ABOUT?

03:43PM 19 A. IT WAS LIKELY IN THE SUMMER OF 2013.

03:43PM 20 Q. AND AROUND THAT TIME, DID YOU HAVE A ROLE IN ASSISTING
03:43PM 21 WITH THE CONTENT OF THE THERANOS WEBSITE?

03:43PM 22 A. YES.

03:43PM 23 Q. AND WHAT WAS YOUR ROLE?

03:43PM 24 A. MY ROLE WAS TO WORK DIRECTLY WITH THE ACCOUNT MANAGERS AND
03:44PM 25 ACCOUNT SUPERVISORS AT TBWACHAT/DAY TO TRACK DELIVERABLES,

03:44PM 1 FACILITATE INFORMATION AND COMMUNICATION.

03:44PM 2 Q. AND YOU MENTIONED TBWACHIAT/DAY?

03:44PM 3 A. YES.

03:44PM 4 Q. AND WHAT IS THAT?

03:44PM 5 A. THAT'S A MARKETING AND ADVERTISING AGENCY.

03:44PM 6 Q. AND WHAT WAS ITS RELATIONSHIP TO THERANOS BACK IN 2013?

03:44PM 7 A. THEY WERE THE AGENCY OR VENDOR THAT THERANOS WAS

03:44PM 8 PARTNERING WITH TO DEVELOP A MARKETING COMMUNICATIONS -- A

03:44PM 9 MARKETING AND COMMUNICATIONS STRATEGY WHICH INCLUDED THE

03:44PM 10 WEBSITE REDESIGN.

03:44PM 11 Q. AND WHEN IT CAME TO THE REDESIGN OF THE WEBSITE, WERE

03:44PM 12 MS. HOLMES AND MR. BALWANI INVOLVED AS CEO AND COO OF THE

03:44PM 13 COMPANY?

03:44PM 14 A. YES.

03:44PM 15 Q. AND IN WHAT WAY WERE THEY INVOLVED?

03:44PM 16 A. THE COMPANY HAD SEVERAL MEETINGS WITH A NUMBER OF

03:45PM 17 DIFFERENT EMPLOYEES AT CHIAT/DAY, AND ELIZABETH AND SUNNY I

03:45PM 18 THINK SPOKE WITH THEM TO ESTABLISH THE TERMS OF THE

03:45PM 19 RELATIONSHIP AND THE SCOPE OF THAT RELATIONSHIP, AND ALSO TO

03:45PM 20 PROVIDE INFORMATION ABOUT THE DIRECTION OF THE COMPANY AND THE

03:45PM 21 STRATEGY AND WHAT THEY WERE HOPING TO ACHIEVE THROUGH A

03:45PM 22 MARKETING EFFORT.

03:45PM 23 Q. I'LL ASK YOU TO LOOK IN YOUR BINDER AT TAB 3965, PLEASE.

03:45PM 24 AND DO YOU HAVE THAT IN FRONT OF YOU?

03:45PM 25 A. I DO.

03:45PM 1 Q. AT 3965, DO YOU SEE AN EMAIL INCLUDING YOU, MR. BALWANI,
03:45PM 2 AND MS. HOLMES RELATING TO WEBSITE CONTENT?

03:45PM 3 A. YES.

03:45PM 4 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 3965.

03:45PM 5 MS. WALSH: YOUR HONOR, WE OBJECT BASED ON HEARSAY.
03:46PM 6 THERE ARE MULTIPLE LAYERS OF HEARSAY IN THIS EMAIL.

03:46PM 7 THE COURT: MR. BOSTIC, ARE YOU SEEKING TO INTRODUCE
03:46PM 8 THE ENTIRETY? IT LOOKS LIKE THERE'S A BROCHURE OR SOMETHING.

03:46PM 9 MR. BOSTIC: YES, YOUR HONOR, BUT NOT FOR ITS TRUTH.

03:46PM 10 THIS IS NOT FOR HEARSAY. THIS IS TO SHOW WHAT WAS BEING
03:46PM 11 CONSIDERED AS CONTENT FOR THE WEBSITE AT THE TIME.

03:46PM 12 IT'S ALSO RELEVANT TO NOTICE TO MS. HOLMES AND MR. BALWANI
03:46PM 13 ABOUT THAT CONTENT AND ISSUES WITH THE CONTENT.

03:47PM 14 (PAUSE IN PROCEEDINGS.)

03:47PM 15 THE COURT: ALL RIGHT. THANK YOU.

03:47PM 16 I'LL ADMIT THIS ONLY FOR THE ISSUE OF NOTICE.

03:47PM 17 LADIES AND GENTLEMEN, THIS IS NOT OFFERED FOR THE TRUTH OF
03:47PM 18 THE MATTER ASSERTED. IT'S NOT BEING ADMITTED FOR THE TRUTH OF
03:47PM 19 ANYTHING ASSERTED IN THESE DOCUMENTS AT ALL, BUT RATHER JUST
03:47PM 20 FOR THE NOTICE OF THE INFORMATION, BUT NOT FOR THE TRUTH.

03:47PM 21 AND IT CAN BE ADMITTED FOR THAT LIMITED PURPOSE AND
03:47PM 22 PUBLISHED.

03:47PM 23 MR. BOSTIC: THANK YOU, YOUR HONOR.

03:47PM 24 (GOVERNMENT'S EXHIBIT 3965 WAS RECEIVED IN EVIDENCE.)

03:47PM 25 MR. BOSTIC: MS. WACHS, IF WE CAN ZOOM IN ON THE

03:47PM 1 HEADER INFORMATION FIRST.

03:47PM 2 Q. AND DO YOU SEE HERE AN EMAIL FROM SOMEONE NAMED

03:47PM 3 JEFFREY BLICKMAN TO MS. HOLMES, CC'ING MR. BALWANI,

03:47PM 4 CHRISTIAN HOLMES, AND YOU?

03:47PM 5 A. YES.

03:47PM 6 Q. WHO WAS JEFF BLICKMAN AT THERANOS?

03:47PM 7 A. JEFF BLICKMAN WAS A SENIOR PRODUCT MANAGER THAT I WORKED

03:47PM 8 WITH.

03:47PM 9 Q. THE SUBJECT LINE HERE IS .COM PDF AND JIM FOX'S COMMENTS.

03:47PM 10 DO YOU SEE THAT?

03:48PM 11 A. YES.

03:48PM 12 Q. AND LET'S LOOK AT THE CONTENT OF THE EMAIL. JUST ZOOM IN

03:48PM 13 ON THE TOP HALF OF THAT FOR NOW.

03:48PM 14 AND MR. BLICKMAN WRITES, "ELIZABETH -- HERE'S THE PDF

03:48PM 15 SCREENSHOTS OF THE LATEST .COM TO SEND TO COUNSEL."

03:48PM 16 WAS THIS CONTENT FOR THE WEBSITE?

03:48PM 17 A. YES.

03:48PM 18 Q. HE SAYS, "ALONG WITH JIM'S (ABRIDGED) FEEDBACK FROM TODAY,

03:48PM 19 REMOVED ANYTHING BASED ON PERSONAL OPINION."

03:48PM 20 DO YOU SEE THAT?

03:48PM 21 A. YES.

03:48PM 22 Q. AND I'D LIKE TO DRAW YOUR ATTENTION TO THE FIRST TWO ITEMS

03:48PM 23 ON THIS LIST. THE FIRST ONE SAYS, "WHAT IS THE SOURCE/BACKUP

03:48PM 24 DATA FOR 'AT THERANOS WE CAN PERFORM ALL LAB TESTS ON A SAMPLE

03:48PM 25 1/1,000 THE SIZE OF A TYPICAL BLOOD DRAW'?"

03:48PM 1 DO YOU SEE THAT?

03:48PM 2 A. YES.

03:48PM 3 Q. AND THE ITEM 2 SAYS, "OUR REVOLUTION/OUR TECHNOLOGY -- 'A
03:49PM 4 TINY DROP IS ALL IT TAKES' -- WE OFTEN USE MORE THAN ONE DROP;
03:49PM 5 WE SHOULD SAY 'A FEW DROPS IS ALL IT TAKES,'" AND THEN OTHER
03:49PM 6 ALTERNATIVES ARE PROVIDED.

03:49PM 7 DO YOU SEE THAT?

03:49PM 8 A. YES.

03:49PM 9 Q. WHAT WAS YOUR UNDERSTANDING OF THE PURPOSE OF THESE
03:49PM 10 COMMENTS ON THE WEBSITE CONTENT?

03:49PM 11 A. THE PURPOSE WAS TO CORRECT ANY -- WAS TO PROPOSE CHANGES
03:49PM 12 THAT WOULD CORRECT ANY INACCURACIES OR INCONSISTENCIES WITH THE
03:49PM 13 WEBSITE CONTENT.

03:49PM 14 Q. OKAY. IF I COULD ASK YOU TO LOOK AT PAGE 4 OF THIS
03:49PM 15 EXHIBIT.

03:49PM 16 MS. WACHS, ZOOM IN ON THE TOP PART OF THE PAGE.

03:49PM 17 AND IT'S A LITTLE FAINT, BUT DO YOU SEE THAT CONTENT THAT
03:49PM 18 IS BEING COMMENTED ON, THE LANGUAGE OF THE NANOTAINER AND THEN
03:49PM 19 THE TEXT "AT THERANOS WE CAN PERFORM ALL LAB TESTS ON A SAMPLE
03:50PM 20 1/1,000 THE SIZE OF A TYPICAL BLOOD DRAW"?

03:50PM 21 A. YES.

03:50PM 22 Q. AT THIS TIME IN SEPTEMBER OF 2013, DID YOU KNOW WHETHER OR
03:50PM 23 NOT THAT STATEMENT WAS TRUE AS TO THE COMPANY'S TECHNOLOGY?

03:50PM 24 A. I DON'T THINK I HAD A BASIS TO MAKE AN ASSESSMENT ONE WAY
03:50PM 25 OR THE OTHER.

03:50PM 1 Q. OKAY. BELOW THE TEXT THAT WE'RE LOOKING AT HERE, THERE'S
03:50PM 2 A LINE THAT SAYS, "A TINY DROP IS ALL IT TAKES."
03:50PM 3 IS THAT ADDITIONAL TEXT THAT WAS BEING COMMENTED ON IN THE
03:50PM 4 EMAIL THAT WE JUST LOOKED AT?
03:50PM 5 A. YES.
03:50PM 6 Q. LET'S GO DOWN A LITTLE BIT MORE ON THIS PAGE AND LOOK AT A
03:50PM 7 SECTION WHERE THERE'S A TITLE, "HIGHEST LEVELS OF ACCURACY."
03:50PM 8 A. YES.
03:50PM 9 Q. AND THAT'S VERY DIFFICULT TO READ.
03:50PM 10 BUT DO YOU SEE TEXT THERE THAT SAYS, "HIGHEST LEVELS OF
03:51PM 11 ACCURACY," AND REFERS TO SYSTEMATICALLY ELIMINATING -- WELL, I
03:51PM 12 WON'T TRY TO READ THAT.
03:51PM 13 (LAUGHTER.)
03:51PM 14 MR. BOSTIC: I WON'T INTERPRET THAT.
03:51PM 15 THE COURT: THANK YOU, MR. BOSTIC.
03:51PM 16 BY MR. BOSTIC:
03:51PM 17 Q. LET'S KEEP IT TO THE TITLE.
03:51PM 18 DO YOU SEE THE QUOTE THERE, "HIGHEST LEVELS OF ACCURACY"?
03:51PM 19 A. YES.
03:51PM 20 Q. IN YOUR ROLE THERE WORKING AT THERANOS, DID YOU HAVE THE
03:51PM 21 OPPORTUNITY TO REVIEW THE ACTUAL PUBLIC WEBSITE OF THE COMPANY?
03:51PM 22 A. YES.
03:51PM 23 Q. AND SITTING HERE TODAY, DO YOU RECALL WHETHER THE WEBSITE
03:51PM 24 ENDED UP MAKING CLAIMS ABOUT THE HIGHEST LEVELS OF ACCURACY?
03:51PM 25 A. I DON'T RECALL THE SPECIFIC WORDING.

03:51PM 1 Q. OKAY. I'LL ASK YOU TO TURN TO TAB 3981, PLEASE.

03:52PM 2 AND LOOKING AT 3981, DO YOU SEE ANOTHER EMAIL CHAIN

03:52PM 3 INCLUDING YOU AND MS. HOLMES AND RELATING TO WEBSITE CONTENT?

03:52PM 4 A. YES.

03:52PM 5 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 3981.

03:52PM 6 MS. WALSH: YOUR HONOR, THIS EXHIBIT HAS THE SAME

03:52PM 7 ISSUE AS THE LAST ONE. THERE ARE MULTIPLE LAYERS OF HEARSAY.

03:52PM 8 MR. BOSTIC: AND IT'S OFFERED FOR THE SAME PURPOSE,

03:52PM 9 YOUR HONOR.

03:52PM 10 THE COURT: NOTICE. NOTICE AS TO?

03:52PM 11 MR. BOSTIC: NOTICE AS TO WEBSITE CONTENT AND

03:52PM 12 POTENTIAL ISSUES WITH THE WEBSITE CONTENT.

03:52PM 13 THE COURT: ALL RIGHT. THANK YOU.

03:52PM 14 LADIES AND GENTLEMEN, THIS WILL BE ADMITTED NOT FOR THE

03:52PM 15 TRUTH OF THE MATTER ASSERTED, BUT SOLELY FOR THE ISSUE OF

03:52PM 16 NOTICE AS TO WEBSITE CONTENT AND ANY ISSUES THERETO, SOLELY FOR

03:52PM 17 THAT PURPOSE.

03:52PM 18 AND IT MAY BE PUBLISHED.

03:52PM 19 (GOVERNMENT'S EXHIBIT 3981 WAS RECEIVED IN EVIDENCE.)

03:53PM 20 MR. BOSTIC: AND LET'S START BY ZOOMING IN ON THE

03:53PM 21 BOTTOM HALF OF PAGE 1.

03:53PM 22 Q. DO YOU SEE, MR. EDLIN, AN EMAIL FROM SOMEONE NAMED

03:53PM 23 JAIME WOLSZON?

03:53PM 24 A. YES.

03:53PM 25 Q. AND DO YOU REMEMBER WHO JAMIE WOLSZON WAS IN RELATION TO

03:53PM 1 THERANOS?

03:53PM 2 A. I BELIEVE SHE'S AN OUTSIDE COUNSEL.

03:53PM 3 Q. AND SHE'S SENDING AN EMAIL TO SOMEONE NAMED KATE BEARDSLEY

03:53PM 4 WHOSE EMAIL ADDRESS IS @BEARDSLEYLAWPLLC.

03:53PM 5 DO YOU SEE THAT?

03:53PM 6 A. YES.

03:53PM 7 Q. AND THE EMAIL SAYS, "PLEASE FIND BELOW MY COMMENTS TO THE

03:53PM 8 THERANOS WEBSITE."

03:53PM 9 DO YOU SEE THAT?

03:53PM 10 A. YES.

03:53PM 11 Q. AND SHE WRITES A COUPLE OF SENTENCES LATER, "AS DISCUSSED,

03:53PM 12 THEY FALL WITHIN THE CATEGORIES OF SUBSTANTIATION FOR

03:53PM 13 SUPERLATIVE OR COMPARATIVE PERFORMANCE CLAIMS."

03:53PM 14 DO YOU SEE THAT?

03:53PM 15 A. YES.

03:53PM 16 Q. AND BEFORE WE LEAVE THIS PAGE, IF WE CAN JUST ZOOM IN ON

03:54PM 17 THE TOP HALF, AND DO YOU SEE THAT THE COMMENTS THAT WE ARE

03:54PM 18 ABOUT TO REVIEW WERE FORWARDED ON SEPTEMBER 6TH FROM MS. HOLMES

03:54PM 19 TO HER BROTHER AND TO SUNNY BALWANI?

03:54PM 20 A. YES.

03:54PM 21 Q. OKAY. LET'S LOOK AT WHAT THOSE COMMENTS ARE.

03:54PM 22 LET'S GO TO PAGE 2 OF THE EXHIBIT. AND LET'S ZOOM IN ON

03:54PM 23 THE TOP FIRST.

03:54PM 24 WE SEE HERE A BULLET POINT LIST OF COMMENTS TO THE WEBSITE

03:54PM 25 CONTENT; CORRECT?

03:54PM 1 A. YES.

03:54PM 2 Q. AND THE FIRST BULLET POINT SAYS, "PLEASE REMOVE REFERENCES

03:54PM 3 TO 'ALL' TESTS AND REPLACE WITH STATEMENTS SUCH AS 'MULTIPLE'

03:54PM 4 OR 'SEVERAL.' IT IS HIGHLY UNLIKELY THAT THE LABORATORY CAN

03:54PM 5 PERFORM EVERY CONCEIVABLE TEST, BOTH FROM A LOGISTICAL

03:54PM 6 STANDPOINT AND BECAUSE THE CLIA CERTIFICATION DESIGNATES

03:54PM 7 SPECIFIC SPECIALTIES OF TESTS THE LAB PERFORMS."

03:55PM 8 DO YOU SEE THAT?

03:55PM 9 A. YES.

03:55PM 10 Q. AND THE SECOND BULLET HAS A SIMILAR COMMENT. IT SAYS,

03:55PM 11 "FOR A SIMILAR REASON, REPLACE 'FULL RANGE' WITH 'BROAD

03:55PM 12 RANGE.'"

03:55PM 13 DO YOU SEE THAT?

03:55PM 14 A. YES.

03:55PM 15 Q. AND SITTING HERE TODAY, DO YOU RECALL WHAT THE THERANOS

03:55PM 16 WEBSITE ENDED UP SAYING ABOUT THE RANGE OF TESTS THAT COULD BE

03:55PM 17 PERFORMED?

03:55PM 18 A. I DON'T REMEMBER THE SPECIFIC WORDING.

03:55PM 19 Q. OKAY. WE CAN COME BACK TO THAT.

03:55PM 20 LET'S GO DOWN IN THE SAME BULLET POINT LIST.

03:55PM 21 AND THERE'S A LINE THAT SAYS "REPLACE 'FASTER AND

03:55PM 22 EASIER.'"

03:55PM 23 A. RIGHT.

03:55PM 24 Q. IT SAYS, "REPLACE 'FASTER AND EASIER' WITH 'FAST AND

03:55PM 25 EASY.'"

03:55PM 1 IS THIS A COMMENT SEEKING TO CHANGE ONE OF THOSE

03:55PM 2 SUPERLATIVE CLAIMS REFERENCED ON THE PREVIOUS PAGE?

03:55PM 3 A. YES.

03:55PM 4 Q. THERE'S ANOTHER COMMENT THAT SAYS, "REPLACE 'HIGHEST

03:55PM 5 QUALITY' WITH 'HIGH QUALITY.'"

03:55PM 6 DO YOU SEE THAT?

03:55PM 7 A. YES.

03:55PM 8 Q. AND THEN THERE'S ONE THAT SAYS, "ENSURE SUBSTANTIATION FOR

03:55PM 9 '4 HOURS OR LESS.'"

03:56PM 10 DO YOU SEE THAT?

03:56PM 11 A. YES.

03:56PM 12 Q. SITTING HERE TODAY, DO YOU KNOW WHETHER THESE CHANGES WERE

03:56PM 13 IN FACT MADE?

03:56PM 14 A. I'M NOT SURE EXACTLY.

03:56PM 15 Q. LET'S GO TO THE BOTTOM OF PAGE 2 AND ZOOM IN ON THE LAST

03:56PM 16 FEW BULLET POINTS -- ACTUALLY START A LITTLE HIGHER. ACTUALLY

03:56PM 17 THE BOTTOM FIVE OR SO.

03:56PM 18 DO YOU SEE SOMETHING, MR. EDLIN, SOMETHING REFERENCING CV

03:56PM 19 AT THE SECOND BULLET POINT THERE?

03:56PM 20 A. YES.

03:56PM 21 Q. IT SAYS "A CV OF LESS THAN 10 PERCENT COULD STILL BE TOO

03:56PM 22 HIGH -- IT DEPENDS ON THE TEST."

03:56PM 23 DO YOU SEE THAT?

03:56PM 24 A. YES.

03:56PM 25 Q. AND IT SAYS, "REPLACE 'HIGHEST LEVELS OF ACCURACY' WITH

03:57PM 1 'HIGH LEVELS OF ACCURACY.'"

03:57PM 2 DO YOU SEE THAT?

03:57PM 3 A. YES.

03:57PM 4 Q. LET'S GO TO PAGE 3 AND SEE A COUPLE MORE OF THESE

03:57PM 5 COMMENTS, AND LET'S ZOOM IN ON THE TOP. AND THE ADVICE TO

03:57PM 6 MS. HOLMES FORWARDED TO MR. BALWANI WAS TO, QUOTE, "CHANGE

03:57PM 7 'MORE PRECISE' TO 'PRECISE.'"

03:57PM 8 DO YOU SEE THAT IN THE THIRD BULLET POINT?

03:57PM 9 A. YES.

03:57PM 10 Q. AND LET'S GO TO PAGE 4 AND ZOOM IN ON THE TOP.

03:57PM 11 DO YOU SEE THE SECOND BULLET POINT READS, "ENSURE

03:57PM 12 SUBSTANTIATION FOR 'UNPRECEDENTED SPEED AND ACCURACY.'"

03:57PM 13 DO YOU SEE THAT ADVICE?

03:57PM 14 A. YES.

03:57PM 15 Q. AND LET'S LOOK AT THE BOTTOM OF THIS LIST.

03:57PM 16 AND DO YOU SEE THE SECOND TO THE BOTTOM CONTAINS THE

03:58PM 17 ADVICE TO MS. HOLMES AND MR. BALWANI TO REMOVE THE, QUOTE,

03:58PM 18 "UNRIVALLED ACCURACY"?

03:58PM 19 DO YOU SEE THAT?

03:58PM 20 A. YES.

03:58PM 21 Q. AND DO YOU KNOW WHETHER ANY OF THESE CHANGES WERE MADE TO

03:58PM 22 THE WEBSITE CONTENT?

03:58PM 23 A. I DON'T RECALL SPECIFICALLY.

03:58PM 24 Q. DO YOU KNOW WHETHER, SUBSEQUENT TO THIS TIME, MS. HOLMES

03:58PM 25 OR MR. BALWANI USED LANGUAGE SIMILAR TO THIS IN DESCRIBING THE

03:58PM 1 COMPANY'S TECHNOLOGY TO INVESTORS OF THE COMPANY?

03:58PM 2 A. YES.

03:58PM 3 Q. WHAT DO YOU KNOW ABOUT THAT?

03:58PM 4 A. I RECALL THAT SOME OF THIS SAME TERMINOLOGY WAS USED IN
03:58PM 5 MATERIALS THAT WERE INCLUDED IN INVESTMENT BINDERS THAT WERE
03:58PM 6 SENT TO INVESTORS OR POTENTIAL INVESTORS.

03:58PM 7 Q. THIS SAME LANGUAGE THAT THE DEFENDANT WAS ADVISED SHOULD
03:58PM 8 NOT BE ON THE WEBSITE?

03:58PM 9 A. I'M NOT SURE IF IT REFERS TO ALL OF THE INFORMATION WE
03:58PM 10 JUST REVIEWED, BUT I DO RECALL THAT THERE IS AT LEAST SOME OF
03:59PM 11 THIS INFORMATION.

03:59PM 12 Q. OKAY. I'D LIKE TO TAKE A LOOK AT SOME OF THAT WITH YOU.
03:59PM 13 BUT THIS MIGHT BE A GOOD TIME TO BREAK FOR THE DAY,
03:59PM 14 YOUR HONOR.

03:59PM 15 THE COURT: ALL RIGHT. LET'S DO THAT.

03:59PM 16 LET'S BREAK -- WE'LL TAKE OUR LONG WEEKEND RECESS, LADIES
03:59PM 17 AND GENTLEMEN.

03:59PM 18 PLEASE RECALL THAT WE WILL NOT BE IN SESSION TOMORROW, NOR
03:59PM 19 FRIDAY.

03:59PM 20 WE WILL NEXT BE TOGETHER ON APRIL 12TH, APRIL 12TH AT
03:59PM 21 9:00 A.M.

03:59PM 22 I ONCE AGAIN REMIND YOU OF THE ADMONISHMENT. PLEASE DO
03:59PM 23 NOT DISCUSS THIS CASE, LEARN ANYTHING ABOUT THIS, OR IN ANY WAY
03:59PM 24 COME ACROSS ANY INFORMATION ABOUT THIS CASE.

03:59PM 25 I'LL ASK YOU THAT QUESTION WHETHER ANY OF THOSE THINGS

03:59PM 1 OCCURRED WHEN WE NEXT GET TOGETHER ON THE 12TH.

03:59PM 2 LET ME ALSO TELL YOU THAT MY SENSE IS THAT ON THE 12TH WE
03:59PM 3 MIGHT HAVE A SEATING CHANGE. AND, OF COURSE, I HAVE NOT TOLD
03:59PM 4 MS. ROBINSON THAT WE WILL DO THAT, BUT WHAT WE EXPECT TO DO IS
04:00PM 5 TO ALLOW OUR DEAR FRIENDS IN THE PEWS OUT THERE, IN THE
04:00PM 6 COMFORTABLE WOOD SEATS, TO MOVE INTO THE FIRST CLASS, BUSINESS
04:00PM 7 CLASS SECTION HERE, AND WE'LL ROTATE FOLKS DOWN ACCORDINGLY.

04:00PM 8 (LAUGHTER.)

04:00PM 9 THE COURT: SO WE'LL COORDINATE ALL OF THAT NEXT
04:00PM 10 WEEK FOR YOU, BUT WE'LL START THAT NEXT WEEK.

04:00PM 11 SO HAVE A GREAT LONG WEEKEND. ENJOY, AND WE'LL SEE YOU
04:00PM 12 SOON. THANK YOU. SEE YOU TUESDAY.

04:00PM 13 AND, MR. EDLIN, IF YOU COULD RETURN ON THE 12TH AT
04:00PM 14 9:00 A.M., THAT WOULD BE GREAT.

04:00PM 15 THE WITNESS: YES, YOUR HONOR.

04:00PM 16 (JURY OUT AT 4:00 P.M.)

04:00PM 17 THE COURT: ALL RIGHT. PLEASE BE SEATED. THANK
04:00PM 18 YOU.

04:00PM 19 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR THE
04:01PM 20 WEEKEND, AND MR. EDLIN HAS LEFT THE COURTROOM.

04:01PM 21 COUNSEL AND MR. BALWANI ARE PRESENT.

04:01PM 22 I JUST WANTED TO INDICATE ON THE RECORD, THE COURT DID
04:01PM 23 ALLOW 291 TO COME IN, 259 TO COME IN, OVER -- I DO WANT TO
04:01PM 24 MEMORIALIZE MS. WALSH'S OBJECTIONS, AS WELL AS MEMORIALIZING
04:01PM 25 THE CONVERSATIONS THAT WE HAD PREVIOUSLY WITH COUNSEL REGARDING

04:01PM 1 1237, WHICH WAS THE MOTION TO EXCLUDE THIS EVIDENCE.

04:01PM 2 THE COURT ALLOWED, AS THE RECORD REFLECTS, THIS TO COME IN
04:01PM 3 FOR A VERY LIMITED PURPOSE, A LIMITED PURPOSE OF KNOWLEDGE
04:01PM 4 ONLY, AS MR. BALWANI WAS A RECIPIENT, AMONGST OTHERS, OF AN
04:01PM 5 EMAIL THAT CONTAINED THAT.

04:01PM 6 IT WAS NOT ADMITTED FOR ANY OTHER PURPOSE, AND ANY OTHER
04:02PM 7 ADDITIONAL USE OF THAT INFORMATION HAS YET TO BE DETERMINED.

04:02PM 8 SO IT WAS ADMITTED SOLELY FOR THAT LIMITED PURPOSE OF
04:02PM 9 KNOWLEDGE.

04:02PM 10 IN DOING SO, THE COURT ALSO -- THERE WAS A 403 OBJECTION
04:02PM 11 BY MS. WALSH.

04:02PM 12 THE COURT FOUND, AND DOES FIND, THAT THE PROBATIVE VALUE
04:02PM 13 AS TO THE KNOWLEDGE ISSUE, AGAIN, THAT LIMITED KNOWLEDGE ISSUE,
04:02PM 14 OUTWEIGHS ANY PREJUDICIAL IMPACT, UNFAIR PREJUDICIAL IMPACT
04:02PM 15 THAT ADMISSION OF THAT EVIDENCE FOR THAT LIMITED PURPOSE
04:02PM 16 CARRIES.

04:02PM 17 SO I JUST WANTED TO SUBSTANTIATE THE COURT'S RULING ON
04:02PM 18 THAT NOW THAT WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

04:02PM 19 SO HAVE A GOOD WEEKEND EVERYONE. WE'LL SEE YOU NEXT WEEK.
04:02PM 20 I THINK IT'S GOING TO BE WARM THIS WEEK, SO ENJOY, AND WE'LL
04:02PM 21 SEE YOU SOON.

04:02PM 22 THANK YOU.

04:02PM 23 MR. BOSTIC: THANK YOU.

04:02PM 24 MR. SCHENK: THANK YOU.

04:02PM 25 MR. CAZARES: THANK YOU, YOUR HONOR.

04:02PM

1

MR. COOPERSMITH: THANK YOU, YOUR HONOR.

04:02PM

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(COURT ADJOURNED AT 4:02 P.M.)

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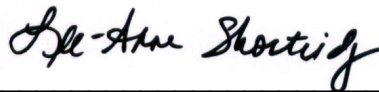
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 6, 2022